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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, May 15, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 77, No. 74
Tuesday, April 17, 2012

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2010–0128]

Asian Longhorned Beetle; Additions to Quarantined Areas in Massachusetts

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle (ALB) regulations by quarantining portions of Suffolk and Norfolk Counties, MA, and expanding the quarantined area in Worcester County, MA. The interim rule also amended the regulations to add plants of the genus *Koelreuteria* (golden raintree) to the list of regulated articles. The interim rule, which restricted the interstate movement of regulated articles from these areas, was necessary to prevent the artificial spread of ALB to noninfested areas of the United States.

DATES: Effective on April 17, 2012, we are adopting as a final rule the interim rule published at 76 FR 52541–52543 on August 23, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulations, Permits, and Manuals, PPQ, APHIS; 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB, *Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing the tree. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulating at tree bases.

The regulations in 7 CFR 301.51–1 through 301.51–9 restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States.

In an interim rule [1] effective and published in the **Federal Register** on August 23, 2011 (76 FR 52541–52543, Docket No. APHIS–2010–0128), we amended the regulations by expanding the quarantined area in Worcester County, MA, and adding portions of Suffolk and Norfolk Counties, MA, after surveys revealed that infestations of ALB have occurred in those areas. We also amended the list of regulated articles by adding *Koelreuteria* spp. (golden raintree) because studies conducted in China by APHIS scientists have found ALB completing a full life cycle in trees of this genus in the environment.

Comments on the interim rule were required to be received on or before October 24, 2011. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

[1] To view the interim rule, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0128.*

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 76 FR 52541–52543 on August 23, 2011.

Done in Washington, DC, this 11th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–9178 Filed 4–16–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0024]

RIN 0579–AD38

Importation of Pomegranates From Chile Under a Systems Approach

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation into the continental United States of pomegranates from Chile, subject to a systems approach. Under this systems approach, the fruit would have to be grown in a place of production that is registered with the national plant protection organization of Chile and certified as having a low prevalence of *Brevipalpus chilensis.* The fruit would have to undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit would have to be inspected in Chile at an approved inspection site. Each consignment of fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *Brevipalpus chilensis* based on field and packinghouse inspections. This action will allow for the safe importation of fresh pomegranates from Chile using mitigation measures other than fumigation with methyl bromide.

DATES: *Effective Date:* May 17, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests within the United States.

On March 16, 2011, we published in the **Federal Register** (76 FR 14320–14323, Docket No. APHIS–2010–0024) a proposal [1] to amend the regulations by allowing pomegranates and figs from Chile to be imported into the United States subject to a systems approach. Under this systems approach, the fruit would have to be grown in a place of production that is registered with the national plant protection organization of Chile and certified as having a low prevalence of *Brevipalpus chilensis.* The fruit would have to undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit would have to be inspected in Chile at an approved inspection site. Each consignment of fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *Brevipalpus chilensis* based on field and packinghouse inspections.

We solicited comments concerning our proposal for 60 days ending May 16, 2011. We received 28 comments by that date. They were from private citizens, port terminal operators, fruit wholesalers, producers, importers, exporters, trade associations, and representatives of State and foreign governments.

Several of the comments we received were focused on figs, with the commenters raising concerns about the efficacy of the systems approach in addressing the risks associated with figs grown in Chile. In order to allow us more time to consider those issues without delaying action on approving the use of the systems approach for pomegranates, we have decided to not finalize the proposed provisions related to the importation of figs from Chile at this time, but may do so in a subsequent action. This final rule only addresses the comments we received on the proposed importation of pomegranates from Chile.

Twenty-two of the commenters supported the proposed rule in its entirety. One comment concerning the importation of Chilean pomegranates did not raise any issues related to the pest risk analysis or proposed rule. The remaining comments on the importation of pomegranates are discussed below by topic.

One commenter opposed the use of the methods described in the proposed rule to mitigate the potential entry of the quarantine pest *Brevipalpus chilensis* (Acari: Tenuipalpidae) into the commenter's State until a pest-free track record is established in shipments of pomegranate from Chile that are received in areas that are lower risk than the commenter's State for the pest's establishment in the United States.

The mitigation measures for *B. chilensis* on pomegranates from Chile have been previously evaluated and proven effective in mitigating the risks presented by *B. chilensis* on other commodities from Chile, and we will continuously monitor the effectiveness of those mitigations with port-of-entry inspections. We do not consider it necessary to restrict the distribution of pomegranates from Chile when proven mitigations are available to mitigate the pest risk and will be required as a condition of importation.

One commenter asked that the proposed rule be revised to specify that Chilean pomegranates may not be imported into Hawaii in order to protect locally grown pomegranate crops.

We proposed that pomegranates from Chile would only be eligible for importation into the continental United States. By definition, the continental United States encompasses the lower 48 states, Alaska, and the District of Columbia, while excluding Hawaii. Our permitting process will allow us to effectively implement the distribution limitation, as it currently does for many other commodities that are not allowed to be imported into Hawaii.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in this document.

Note: In our March 2011 proposed rule, we proposed to add the conditions governing the importation of pomegranates from Chile as § 319.56–51. In this final rule, those conditions are added as § 319.56–56.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see footnote 1 for a link to Regulations.gov).

Pomegranates may be imported into the continental United States when fumigated with methyl bromide. This rule will allow the importation of fresh pomegranate fruit from Chile using a systems approach to pest risk mitigation. Under this systems approach, the fruit will be grown in a place of production that is registered with the Government of Chile and certified as having a low prevalence of *B. chilensis.* The fruit will undergo pre-harvest sampling and post-harvest inspection. Each consignment of fruit will be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *B. chilensis* based on field and packinghouse inspections.

Entities potentially affected by the rule are U.S. pomegranate fruit growers. They are classified within the industry Other Non-citrus Fruit Farming, for which the Small Business Administration's small entity standard is annual sales of not more than $750,000. Annual receipts for this industry averaged about $112,000 in 2007, well below the small-entity standard.

While most U.S. pomegranate operations are small, they are not expected to be significantly affected by the rule. Relatively small quantities of pomegranates are expected to be imported from Chile because of this rule, equivalent to less than 4 percent of the estimated U.S. production of pomegranates consumed domestically in recent years. Moreover, Chilean pomegranates will be imported during the U.S. off-season. The counter-seasonality will preclude negative price impacts for U.S. producers. Off-season availability of pomegranates from Chile may help broaden demand for this fruit, thereby benefiting domestic producers over time.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0024.*

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

Executive Order 12988

This final rule allows fresh pomegranates to be imported into the continental United States from Chile. State and local laws and regulations regarding fresh pomegranates imported under this rule will be preempted while the fruit is in foreign commerce. Fresh pomegranates are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0375. Because we are not finalizing the provisions in the proposed rule related to the importation of figs from Chile, this approval covers only the information collection and recordkeeping requirements associated with the importation of pomegranates from Chile.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–56 is added to read as follows:

§ 319.56–56 Fresh pomegranates from Chile.

Fresh pomegranates (*Punica granatum*) may be imported into the continental United States from Chile under the following conditions:

(a) *Production site registration.* The production site where the fruit is grown must be registered with the national plant protection organization (NPPO) of Chile. Harvested pomegranates must be placed in field cartons or containers that are marked to show the official registration number of the production site. Registration must be renewed annually.

(b) *Low-prevalence production site certification.* The fruit must originate from a low-prevalence production site to be imported under the conditions in this section. Between 1 and 30 days prior to harvest, random samples of fruit must be collected from each registered production site under the direction of the NPPO of Chile. These samples must undergo a pest detection and evaluation method as follows: The fruit must be washed using a flushing method, placed in a 20-mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process must then be repeated. The contents of the 200-mesh sieve must then be placed on a petri dish and analyzed for the presence of live *Brevipalpus chilensis* mites. If a single live *B. chilensis* mite is found, the production site will not qualify for certification as a low-prevalence production site. Each production site may have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence will be valid for one harvest season only. The NPPO of Chile will present a list of certified production sites to APHIS.

(c) *Post-harvest processing.* After harvest, all damaged or diseased fruits must be culled at the packinghouse and must be packed into new, clean boxes, crates, or other APHIS-approved packing containers. Each container in which the fruit is packed must have a label identifying the registered production site where the fruit originated and the packing shed where it was packed.

(d) *Phytosanitary inspection.* Fruit must be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile following any post-harvest processing. A biometric sample must be drawn and examined from each consignment. Pomegranates in any consignment may be shipped to the continental United States under the conditions of this section only if the consignment passes inspection as follows:

(1) Fruit presented for inspection must be identified in the shipping documents accompanying each lot of fruit to specify the production site or sites in which the fruit was produced and the packing shed or sheds in which the fruit was processed. This identification must be maintained until the fruit is released for entry into the United States.

(2) A biometric sample of the boxes, crates, or other APHIS-approved packing containers from each consignment will be selected by the NPPO of Chile, and the fruit from these boxes, crates, or other APHIS-approved packing containers will be visually inspected for quarantine pests. A portion of the fruit must be washed with soapy water and the collected filtrate must be microscopically examined for *B. chilensis.* If a single live *B. chilensis* mite is found during the inspection process, the certified low-prevalence production site where the fruit was grown will lose its certification.

(e) *Phytosanitary certificate.* Each consignment of fresh pomegranates must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of *Brevipalpus chilensis* based on field and packinghouse inspections.

(Approved by the Office of Management and Budget under control number 0579–0375)

Done in Washington, DC, this 11th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–9184 Filed 4–16–12; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. OP–1440]

Payment System Risk Policy; Daylight Overdraft Posting Rules

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has revised its Policy on Payment System Risk (PSR Policy) to modify the posting rules to conform with procedural changes to the redemption of separately-sorted savings bonds and to eliminate a reference to the contractual clearing balance program.

DATES: *Effective Date:* The PSR Policy revisions concerning separately-sorted savings bond redemptions will take effect on April 11, 2012. Revisions related to the elimination of the contractual clearing balance program are effective July 12, 2012.

FOR FURTHER INFORMATION CONTACT: Susan V. Foley, Associate Director, (202/452–3596) or Jeffrey D. Walker, Manager, Financial Risk Management, (202/721–4559), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) only, please call 202/263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Posting Rules for Separately-Sorted Savings Bond Redemptions

The Board's PSR Policy measures depository institutions' intraday account balances according to a set of ''posting rules'' that determine the intraday timing of debits and credits to institutions' Federal Reserve accounts for different payment types. Posting rules currently specify that EZ-Clear savings bond redemptions in separately-sorted deposits will post at 8:30 a.m. Eastern time or 5 p.m. Eastern time, depending on the deposit time.

As announced by the Department of the Treasury on March 20, 2012 (77 FR 16165), effective April 11, 2012, Treasury is changing the procedures for financial institutions to transmit and receive settlement for redeemed definitive (paper) savings securities (savings bonds and savings notes) from the EZ-Clear system to an image-based securities process through the Federal Reserve Banks, and the EZ-Clear program will be decommissioned following the transition. The Reserve Banks will begin accepting redeemed savings bonds as electronic images on Monday, April 16, 2012. The Federal Reserve Bank of Atlanta will accept deposits of redeemed savings bonds in paper form, but the processing of the bonds will no longer be based on the EZ-Clear system. The posting rules for separately-sorted savings bond redemptions remain unchanged, except that references to the EZ-Clear system have been removed from the PSR Policy.

Reference to the Contractual Clearing Balance Program

Under the PSR Policy, each Reserve Bank has the right to protect its risk exposure from individual institutions by unilaterally imposing risk-control measures, including requiring an institution to maintain balances under the contractual clearing balance program.[1] The Board, however, is amending Regulation D to eliminate the contractual clearing balance program on July 12, 2012.[2] To conform to this amendment to Regulation D, the reference to clearing-balance requirements is being removed from the PSR policy. Instead, the PSR policy will reference the right of a Reserve Bank to impose balance requirements. Depository institutions may be eligible to earn interest on these required balances held in their Federal Reserve accounts.[3]

Policy on Payment System Risk

The Federal Reserve Policy on Payment System Risk, Section II.A. under the heading ''Procedures for Measuring Daylight Overdrafts'' and the subheadings ''Post at 8:30 a.m. Eastern time'' and ''Post at 5 p.m. Eastern time'' is amended with changes as indicated in *italics.*

Procedures for measuring daylight overdrafts [4]

Post at 8:30 a.m. Eastern time:

+/− Term deposit maturities and accrued interest

+/− Government and commercial ACH credit transactions [5]

+ Treasury Electronic Federal Tax Payment System (EFTPS) investments from ACH credit transactions

+ Advance-notice Treasury investments

+ Treasury checks, postal money orders, local Federal Reserve Bank checks, and savings bond redemptions in separately sorted deposits; these items must be deposited by 12:01 a.m. local time or the local deposit deadline, whichever is later.

− Penalty assessments for tax payments from the Treasury Investment Program (TIP).[6]

Post at 5 p.m. Eastern time:

+/− FedACH SameDay service transactions

+ Treasury checks, postal money orders, and savings bond redemptions in separately sorted deposits; these items must be deposited by 4 p.m. Eastern time

+ Local Federal Reserve Bank checks; these items must be presented before 3 p.m. Eastern time

+/− Immediate-settlement ACH transactions; these transactions include ACH return items and check-truncation items.

Additionally, in the Federal Reserve Policy on Payment System Risk, Section II.G.1 under the subheading ''Ex post,'' the phrase ''clearing-balance requirements'' will be replaced with ''balance requirements.'' The new sentence will read ''Each Reserve Bank retains the right to protect its risk exposure from individual institutions by unilaterally reducing net debit caps, imposing (additional) collateralization or balance requirements, rejecting or delaying certain transactions as described below, or, in extreme cases, taking the institution offline or prohibiting it from using Fedwire.''

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[1] A contractual clearing balance is an amount that an institution contracts to maintain with a Reserve Bank in additional to any reserve balance requirement.

[2] 77 FR 21846 (April 12, 2012).

[3] 73 FR 59482 (October 9, 2008).

[4] This schedule of posting rules does not affect the overdraft restrictions and overdraft-measurement provisions for nonbank banks established by the Competitive Equality Banking Act of 1987 and the Board's Regulation Y (12 CFR 225.52).

[5] Institutions that are monitored in real time must fund the total amount of their commercial ACH credit originations in order for the transactions to be processed. If the Federal Reserve receives commercial ACH credit transactions from institutions monitored in real time after the scheduled close of the Fedwire Funds Service, these transactions will be processed at 12:30 a.m. the next business day, or by the ACH deposit deadline, whichever is earlier. The Account Balance Monitoring System provides intraday account information to the Reserve Banks and institutions and is used primarily to give authorized Reserve Bank personnel a mechanism to control and monitor account activity for selected institutions. For more information on ACH transaction processing, refer to the ACH Settlement Day Finality Guide available through the Federal Reserve Financial Services Web site at *http://www.frbservices.org.*

[6] The Reserve Banks will identify and notify institutions with Treasury-authorized penalties on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will identify and notify institutions with Treasury-authorized penalties on the following business day. Penalties will then be posted on the business day following notification.

By order of the Board of Governors of the Federal Reserve System, April 12, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–9211 Filed 4–16–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2012–0226; Airspace Docket No. 12–ASO–10]

RIN 2120–AA66

Amendment of Restricted Area R–2917, De Funiak Springs, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies restricted area R–2917 by reducing the lateral and vertical dimensions of the area. The U.S. Air Force has determined that a smaller restricted area is needed to ensure that aircraft carrying certain electro-explosive devices remain a safe distance from an FPS–85 radar site.

DATES: Effective date 0901 UTC, May 31, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, AJV–11, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1996, the FAA published a final rule in the **Federal Register** to expand the lateral and vertical dimensions of restricted area R–2917, De Funiak Springs, FL, which surrounds an FPS–85 radar system located at that site (61 FR 0004). The expanded restricted area consisted of a 2.5 nautical mile radius, from the surface up to, but not including, Flight Level (FL) 230. The purpose of R–2917 is to provide protected airspace around the radar site because the radio frequency (RF) energy emitted by the radar has the potential to activate electro-explosive devices (EED) carried on board certain aircraft. It should be noted that R–2917 is located within the confines of a much larger restricted area, R–2914A, which extends from the surface to unlimited altitude.

A recent revision to Air Force explosive safety standards guidance revised the formula for computing the hazards to EED from FPS–85 RF radiation. As a result, a smaller safe separation distance is required for aircraft carrying EED. This allows the size of R–2917 to be reduced to a one-nautical mile radius up to 5,000 feet MSL. The smaller restricted area R–2917 remains totally contained within existing restricted area R–2914A.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 to change the lateral and vertical dimensions of R–2917, De Funiak Springs, FL, from the current 2.5-nautical mile radius circle, extending from the surface to, but not including FL 230, to a one-nautical mile radius circle, extending from the surface to 5,000 feet MSL.

Because this amendment reduces the size of restricted airspace within the confines of a larger existing restricted area and does not increase the burden on the public, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311c., FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. This action reduces the vertical and lateral dimensions of special use airspace; therefore, it is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

§ 73.29 [Amended]

■ 2. § 73.29 is amended as follows:

* * * * *

1. R–2917 De Funiak Springs, FL [Amended]

By removing the current Boundaries and Designated altitudes and substituting the following: Boundaries. A circle with a 1-nautical mile radius centered at lat. 30°34′21″N., long. 86°12′53″W.

Designated altitudes. Surface to 5,000 feet MSL.

Issued in Washington, DC on April 12, 2012.

Ellen Crum,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–9186 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2012–N–0002]

New Animal Drugs for Use in Animal Feeds; Tiamulin

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 those parts of a new animal drug application (NADA) for a tiamulin Type A medicated article that pertain to the production indications for use of increased rate of weight gain and improved feed efficiency in swine.

DATES: This rule is effective April 17, 2012.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish

Pl., Rockville, MD 20855, 240–276–8341, email: *cindy.burnsteel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Novartis Animal Health U.S., Inc. (Novartis), 3200 Northline Ave., suite 300, Greensboro, NC 27408, has requested that FDA withdraw approval of those parts of NADA 139–472 for DENAGARD (tiamulin) Type A medicated article pertaining to the production indications for use of increased rate of weight gain and improved feed efficiency in swine. Novartis requested voluntary withdrawal of approval of these indications for use because the product is no longer marketed for these uses. Revised product labeling reflecting the withdrawal of these indications has been approved in a supplement to NADA 139–472.

Elsewhere in this issue of the **Federal Register**, FDA gave notice that the approval of those parts of NADA 139–472 pertaining to the production indications for use of increased rate of weight gain and improved feed efficiency in swine is withdrawn, effective April 17, 2012. As provided for in the regulatory text of this document, the animal drug regulations are amended to reflect this withdrawal of approval.

With the withdrawal of approval of the production indications for tiamulin, the lowest concentration of the drug in feed now has a preslaughter withdrawal period. In accordance with 21 CFR 558.3(b)(1)(ii), tiamulin is now a Category II drug, and the table in 21 CFR 558.4(d) is revised to reflect that change. However, the maximum concentration of tiamulin in Type B feeds is not being increased from the current 3.5 grams per pound (g/lb) because there is an approved 5-g/lb Type A medicated article.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

■ 2. In paragraph (d) of § 558.4, in the ''Category I'' table, remove the entry for ''Tiamulin''; and in the ''Category II'' table, alphabetically add a new entry for ''Tiamulin'' to read as follows:

§ 558.4 Requirement of a medicated feed mill license.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits percent [1] Type A	Type B maximum (100x)	Assay limits percent [1] Type B/C [2]
* *	* *	* *	*
Tiamulin	113.4 g/lb, 100–108	3.5 g/lb (0.8%)	90–115
	5 and 10 g/lb, 90–115		70–130
* *	* *	* *	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

* * * * *

§ 558.600 [Amended]

■ 3. In § 558.600, in the table, remove and reserve paragraph (e)(1)(i).

Dated: March 21, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–9196 Filed 4–16–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF STATE

22 CFR Parts 120 and 123

RIN 1400–AC85

[Public Notice: 7846]

Amendment to the International Traffic in Arms Regulations: International Import Certificate BIS–645P/ATF–4522/DSP–53 and Administrative Changes

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to remove reference to the International Import Certificate (Form BIS–645P/ATF–4522/DSP–53). This amendment ceases the Department's practice of accepting DSP–53 submissions. Instead, the DSP–61 is to be used by importers when necessary. The Department also is making administrative changes to other sections.

DATES: *Effective Date:* This rule is effective May 17, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Acting Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792, email *DDTCResponseTeam@state.gov.* ATTN: International Import Certificate, ITAR Section 123.4.

SUPPLEMENTARY INFORMATION: The Arms Export Control Act authorizes the President to control the import and export of defense articles. Executive Order 11958, as amended, delegated the authority to regulate permanent and temporary exports and temporary imports of defense articles to the Secretary of State, and delegated the authority to regulate permanent imports of defense articles to the Attorney

General. The International Import Certificate Form BIS–645P/ATF–4522/DSP–53 is identified as a form issued by the Department of Commerce's Bureau of Industry & Security (BIS); the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE); and the Department of State's Directorate of Defense Trade Controls (DDTC). It is meant to standardize procedures used to facilitate international trade.

DDTC receives a few hundred DSP–53 submissions a year, and typically they are submitted by persons claiming the temporary import licensing exemption available at § 123.4, but who need documentation of U.S. Government approval of the temporary import. The Department of State's DSP–61 (Application/License for Temporary Import of Unclassified Defense Articles) is the primary means by which the Department exercises its authority to control the temporary import of defense articles. Therefore, DDTC revises § 123.4 to implement its decision to no longer accept submissions of the International Import Certificate (DSP–53). For temporary imports of defense articles meeting the conditions of the exemption at § 123.4, but for which the foreign exporter requires documentation, the U.S. importer will be required to obtain a DSP–61. BATFE and BIS will continue to adjudicate International Import Certificate submissions for items under their jurisdiction. DDTC also revises § 123.3 to specify that a DSP–61 is accepted to support the use of a temporary import exemption but not in satisfaction of requirements for a permanent import. And § 120.28(b)(1) is amended to remove reference to the DSP–53.

Section 120.31 is amended to update the list of NATO countries by adding Albania and Croatia. Section 123.1(c)(4) is amended to replace reference to an obsolete form (''Department of Defense Form 1513'') with reference to the proper documentation (''Letter of Offer and Acceptance''). Section 123.4(c)(1) is amended to provide a correct reference (§ 120.1(c) rather than § 120.1(b)). Section 123.4(c)(2) is amended to provide updated terminology (''Electronic Export Information'' replaces ''Shipper's Export Declaration''). Section 123.4(c)(3) is amended to provide updated terminology (proscribed ''area'' and ''person,'' in addition to ''proscribed country''). And § 123.25(b) is amended by removing the word ''that'' in the statement before the colon.

The Department of State's intention to discontinue accepting submissions of the DSP–53 was first published as a proposed rule on July 14, 2011, soliciting public comment (76 FR 41438). The comment period ended August 29, 2011. Three parties filed comments. The Department's evaluation of the written comments and recommendations follows.

Three commenting parties noted that many foreign governments view the International Import Certificate as a means of providing not only certification by the U.S. Government of proposed imports, but also of providing end-use assurances in a manner similar to the Department's form DSP–83 (Nontransfer and Use Certificate). Similarly, one commenting party suggested the Department should provide U.S. exporters with an explanatory notice that can be presented to foreign officials that request an International Import Certificate subsequent to this rulemaking. The intent of the International Import Certificate is not to provide end-use assurances; it is intended to provide U.S. government acknowledgment of a proposed import. For items under their import jurisdiction, BIS and BATFE will continue to adjudicate International Import Certificate submissions, and therefore will continue to provide applicants documentation regarding U.S. government acknowledgment of proposed imports. For items under Department of State import jurisdiction, an approved DSP–61 serves as U.S. government acknowledgement and approval of a proposed temporary import.

Three commenting parties expressed concern that the Department's proposal to cease issuing International Import Certificates could inadvertently disrupt international trade. Two of the commenting parties recommended the Department coordinate with the international community to ensure alternative means of assurances are acceptable. The Department accepts this recommendation and notes that it has previously expressed the intent to discontinue the DSP–53 with the international community at various international conferences and at the Wassenaar Arrangement. In these forums, no concerns were expressed to the Department.

One commenting party stated that the requirement to obtain a DSP–61, if documentation is required by a foreign exporter, will lead to cumbersome and unnecessary licensing reviews. The Department acknowledges that in a relatively small number of cases, license review will occur when with use of the DSP–53 it would have been avoided. The Department notes that the DSP–61 is the appropriate means by which a person may obtain documentation of U.S. Government approval for the temporary import of defense articles otherwise eligible for the license exemption at ITAR § 123.4.

One commenting party requested guidance on the means by which it can fulfill a foreign exporter's requirement for documentation of U.S. Government authorization for the permanent import of defense articles not listed on the U.S. Munitions Import List (''USMIL,'' a subset of the USML). BATFE has jurisdiction over the permanent import of defense articles, even when those defense articles are not listed on the USMIL. Therefore, an International Import Certificate may be submitted to BATFE in such instances.

One commenting party recommended the removal of reference in the final rule to the form DSP–85 (Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data), noting § 123.4 applies only to unclassified articles and that the ITAR is already clear that temporary imports of classified defense articles require use of the DSP–85. The Department accepted this recommendation.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department published this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly

or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175

The Department has determined that this rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed this amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

By this rulemaking, the Department of State will discontinue accepting one form (DSP–53) for the certification of a proposed temporary import of defense articles, and require the submission of another form (DSP–61) when there is the requirement for documentation of U.S. Government approval of the temporary import of defense articles that otherwise would be eligible for an available license exemption. Therefore, while in a limited number of instances this rule will result in different reporting and recordkeeping requirements, it does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Parts 120 and 123

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120 and 123 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

■ 2. Section 120.28 is amended by revising paragraph (b)(1), redesignating paragraph (b)(3) as paragraph (c), and revising newly redesignated paragraph (c) as follows:

§ 120.28 Listing of forms referred to in this subchapter.

* * * * *

(b) Department of Commerce, Bureau of Industry and Security:

(1) International Import Certificate (Form BIS–645P/ATF–4522).

* * * * *

(c) Department of Defense, Defense Security Cooperation Agency: Letter of Offer and Acceptance.

■ 3. Section 120.31 is amended by revising it to read as follows:

§ 120.31 North Atlantic Treaty Organization.

North Atlantic Treaty Organization (NATO) is comprised of the following member countries: Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom, and the United States.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 4. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228.

■ 5. Section 123.1 is amended by revising paragraph (c)(4) to read as follows:

§ 123.1 Requirement for export or temporary import licenses.

* * * * *

(c) * * *

(4) An application for a license under this part for the permanent export of defense articles sold commercially must be accompanied by a copy of a purchase order, letter of intent, or other appropriate documentation. In cases involving the U.S. Foreign Military Sales program, three copies of the relevant Letter of Offer and Acceptance are required, unless the procedures of § 126.4(c) or § 126.6 of this subchapter are followed.

* * * * *

■ 6. Section 123.3 is amended by adding paragraph (c), to read as follows:

§ 123.3 Temporary import licenses.

* * * * *

(c) A DSP–61 license may be obtained by a U.S. importer in satisfaction of § 123.4(c)(4) of this subchapter. If a foreign exporter requires documentation for a permanent import, the U.S. importer must contact the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives for the appropriate documentation. A DSP–61 will not be approved to support permanent import requirements.

■ 7. Section 123.4 is amended by revising paragraphs (c)(1) through (c)(3), and adding paragraph (c)(4), to read as follows:

§ 123.4 Temporary import license exemptions.

* * * * *

(c) * * *

(1) The importer must meet the eligibility requirements set forth in § 120.1(c) of this subchapter;

(2) At the time of export, the ultimate consignee named on the Electronic

Export Information (EEI) must be the same as the foreign consignee or end-user of record named at the time of import;

(3) A stated in § 126.1 of this subchapter, the temporary import must not be from or on behalf of a proscribed country, area, or person listed in that section unless an exception has been granted in accordance with § 126.3 of this subchapter; and

(4) The foreign exporter must not require documentation of U.S. Government approval of the temporary import. If the foreign exporter requires documentation for a temporary import that qualifies for an exemption under this subchapter, the U.S. importer will not be able to claim the exemption and is required to obtain a DSP–61 Application/License for Temporary Import of Unclassified Defense Articles.

* * * * *

■ 8. Section 123.25 is amended by revising paragraph (b) to read as follows:

§ 123.25 Amendments to licenses.

* * * * *

(b) The following types of amendments to a license will be considered: Addition of U.S. freight forwarder or U.S. consignor; change due to an obvious typographical error; change in source of commodity; and change of foreign intermediate consignee if that party is only transporting the equipment and will not process (*e.g.,* integrate, modify) the equipment. For changes in U.S. dollar value see § 123.23.

* * * * *

Dated: April 6, 2012.

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2012–9081 Filed 4–16–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 183

[DOD–2009–OS–0039; RIN 0790–AI55]

Defense Support to Special Events

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule establishes procedures and assigns responsibilities for Special Events, sets forth procedural guidance for the execution of Special Events support when requested by civil authorities or qualifying entities and approved by the appropriate DoD authority, or as directed by the President, within the United States, including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States or any political subdivision thereof and elsewhere if properly approved.

DATES: This rule is effective May 17, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Corbin, 571–256–8319.

SUPPLEMENTARY INFORMATION: The Department of Defense published a proposed rule on November 26, 2010 (75 FR 72767–72771). One comment was received and addressed below:

Comment: ''This comment pertains to Page 72770, Section A(iiii)G reference to DOD support to the ''National Boy Scout Jamboree''. Recommend that DOD not support this event. The Boy Scouts of America are an organization that discriminates based on sex, sexual orientation, and religion. DOD support is contrary to policies of state governments and the federal government. Material support is against the general principle of separation of church and state and the important elements of the constitution of the United States. DOD support essentially demonstrates an ''establishment of religion'' and is contrary to anti-discrimination policys [sic].''

Response: The Department of Defense has valid statutory authority, 10 U.S.C. 2554, for providing support to the Boy Scout jamboree.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been certified that 32 CFR Part 183 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a section of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Sec. 202, Pub. L. 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 183 does not contain a Federal mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601 et seq.)

It has been certified that 32 CFR part 183 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule establishes procedures and assigns responsibilities within DoD for Special Events in support of civil and non-governmental entities; therefore, it is not expected that small entities will be affected because there will be no economically significant regulatory requirements placed upon them.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 183 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 183 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the national government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 183

Armed forces, Special events.

Accordingly, 32 CFR part 183 is added to subchapter I to read as follows:

PART 183—DEFENSE SUPPORT OF SPECIAL EVENTS

Sec.

Authority: 2 U.S.C. 1966, 2 U.S.C. 1970, 10 U.S.C. 372–374, 10 U.S.C. 377, 10 U.S.C. 2012, 10 U.S.C. 2553–2555, 10 U.S.C. 2564, 18 U.S.C. 1385, 18 U.S.C. 3056, 31 U.S.C. 1535–1536, 32 U.S.C. 502, 32 U.S.C. 508, Pub. L. 94–524, and Section 5802 of Pub. L. 104–208, as amended.

§ 183.1. Purpose.

This part:

(a) Establishes DoD policy, assigns responsibilities, and provides procedures for support of civil authorities and qualifying entities during the conduct of special events in accordance with the authority in DoD Directive (DoDD) 5111.1 (see *http://www.dtic.mil/whs/directives/corres/pdf/511101p.pdf*) and the Deputy Secretary of Defense Memorandum, ''Delegations of Authority,'' November 30, 2006 (available by written request to Deputy Secretary of Defense, 1010 Defense Pentagon, Washington, DC 20301–1010). This support will be referred to as ''support of special events.''

(b) Implements provisions of DoDD 5111.1; the Deputy Secretary of Defense Memorandum, ''Delegations of Authority,'' November 30, 2006; title 2, United States Code (U.S.C.), sections 1966 and 1970; title 10, U.S.C., sections 372–374, 377, 2012, 2553–2555, and 2564; title 18, U.S.C. sections 1385 and 3056; title 31, U.S.C., sections 1535–1536; title 32, U.S.C., sections 502 and 508; Public Law 94–524; Section 5802 of Public Law 104–208, as amended; and title 32, Code of Federal Regulations (CFR) part 185, addressing matters pertaining to Defense Support of Civil Authorities (DSCA) for special events, including support for qualifying entities.

§ 183.2. Applicability and scope.

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff (CJCS) and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, National Guard personnel providing support of special events in title 32, U.S.C., status, and all other organizational entities in DoD (hereinafter referred to collectively as the ''DoD Components'').

(b) Does not apply to installation commanders or Heads of DoD Components providing localized support to a special event solely under the auspices of community relations, public outreach, or recruitment efforts pursuant to DoDD 5410.18 (see *http://www.dtic.mil/whs/directives/corres/pdf/541018p.pdf)* and DoD Instruction (DoDI) 5410.19 (see *http://www.dtic.mil/whs/directives/corres/pdf/541019p.pdf)* or other similar authority.

§ 183.3. Definitions.

Unless otherwise noted, these terms and definitions are for the purpose of this part only.

Civil Authorities. Defined in Joint Publication 1–02 (see *http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf*.)

Integrated Federal Support Overview (IFSO). A collaborative effort of the Special Events Working Group. The purpose of the IFSO is to inform the Secretary of Homeland Security and other appropriate senior Federal officials, including the Federal coordinator for the special event, of all the Federal activities and support in preparation for and execution of a special event. The IFSO facilitates the Federal coordinator's ability to lead a unified coordination group initially in case of an incident to support the Secretary of Homeland Security's incident management responsibilities. It also educates Federal interagency partners on Federal resources committed to the special event.

National Special Security Event (NSSE). An event of national significance as determined by the Secretary of Homeland Security. These national or international events, occurrences, contests, activities, or meetings, which, by virtue of their profile or status, represent a significant target, and therefore warrant additional preparation, planning, and mitigation efforts. The USSS, FBI, and FEMA are the Federal agencies with lead responsibilities for NSSEs; other Federal agencies, including DoD, may provide support to the NSSE if authorized by law.

NSSE Executive Steering Committee. Established when the Secretary of Homeland Security designates a specific event to be an NSSE. The group, led by the USSS, comprises Federal, State, and local public safety and security officials whose primary responsibility is to coordinate and develop a specific security plan for the designated NSSE.

Qualifying entity. A non-governmental organization to which the Department of Defense may provide assistance by virtue of statute, regulation, policy, or other approval by the Secretary of Defense or his or her authorized designee.

Special event. An international or domestic event, contest, activity, or meeting, which by its very nature, or by specific statutory or regulatory authority, may warrant security, safety, and other logistical support or assistance from the Department of Defense. Event status is not determined by the Department of Defense, and support may be requested by either civil authorities or non-governmental entities. Support provided may be reimbursable.

Special Event Working Group. A single forum designed to ensure comprehensive and coordinated Federal interagency awareness of, and appropriate support to, special events. The Special Event Working Group is co-chaired by representatives from DHS (including the USSS and FEMA) and the FBI, and comprises representatives from more than 40 Federal departments and agencies, including the Department of Defense, the Departments of Homeland Security, Justice, State, Energy, Labor, Health and Human Services, and Commerce, the Office of the Director of National Intelligence, and the Environmental Protection Agency. The Department of Defense representative on the Special Event Working Group is designated by the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)).

§ 183.4. Policy.

It is DoD policy that:

(a) DoD capabilities may be used to provide support for international and domestic special events as authorized by law and DoD policy. DoD resources in support of special events may be provided only after the resources of all other relevant governmental and non-governmental entities are determined not to be available, unless there is a statutory exception or the Department of Defense is the only source of specialized capabilities. DoD support should not be provided if use of commercial enterprises would be more appropriate.

(b) DoD Components shall provide support to civil authorities or qualifying entities for special events only as authorized in this part.

(c) The Department of Defense may support such events with personnel, equipment, and services in accordance with applicable laws, regulations, and interagency agreements. Most support shall be provided on a non-interference basis, with careful consideration given to effects on readiness and current operations. Support for National Special Security Events (NSSEs) shall be in accordance with National Security Presidential Directive-46/Homeland Security Presidential Directive-15, Annex II.

(d) DoD security and safety-related support for an event shall have priority over logistics assistance. However, logistics assistance may be provided if deemed appropriate and necessary, consistent with applicable statutes and policy guidance.

(e) Funding for special events is subject to the following:

(1) The Department of Defense may receive separate funding or authority to provide support to specific special events.

(2) Support of special events for which the Department of Defense does not receive appropriations or for which DoD funds are not available for such support must be approved by the Secretary of Defense and must be provided on a reimbursable basis in accordance with title 10, U.S.C., sections 377, 2553–2555, and 2564; title 31, U.S.C., sections 1535–1536; or other applicable statutes.

(3) Reimbursement for DoD support provided to civilian law enforcement agencies during special events is required, in accordance with title 10 U.S.C. 377, unless the Secretary of Defense elects to waive reimbursement after determining that the support:

(i) Is provided in the normal course of military training or operations; or

(ii) Results in a benefit to the personnel providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

(4) The DoD will provide support to NSSEs in accordance with HSPD 15/NSPD 46, as authorized by law and policy.

(5) Security and safety of special events are responsibilities shared by Federal, State, and local authorities. If Federal funds will be provided to State or local authorities to offset the costs of enhanced security and public safety for special events and if State or local officials request the employment of National Guard personnel in a Federal pay status, States shall be encouraged to use those funds to employ those National Guard personnel in a State pay status or to reimburse the Department of Defense for costs related to the employment of the National Guard personnel in a Federal pay status.

(f) DoD support of special events that includes support to civilian law enforcement officials must comply with DoDD 5525.5 (see *http://www.dtic.mil/whs/directives/corres/pdf/552505p.pdf*).

(g) DoD support of special events that includes support to civilian intelligence officials must comply with DoD 5240.1–R (see *http://www.dtic.mil/whs/directives/corres/pdf/524001r.pdf*).

§ 183.5. Responsibilities.

(a) The Under Secretary of Defense for Policy (USD(P)) shall establish policy for and facilitate the interagency coordination of special events with Federal, State, and local agencies, and qualifying entities and the DoD Components, as required.

(b) The ASD(HD&ASA), under the authority, direction, and control of the USD(P), shall:

(1) In coordination with the CJCS, oversee the management and coordination of DoD support of special events including events covered under title 10, U.S.C., section 2564.

(2) Serve as the principal civilian advisor to the Secretary of Defense and the USD(P) on DoD support of special events.

(3) In accordance with DoDD 5111.13 (see *http://www.dtic.mil/whs/directives/corres/pdf/511113p.pdf*), approve requests for assistance from civil authorities and qualifying entities for DoD support of special events. Such requests shall be coordinated with appropriate offices within OSD, with the CJCS, and with the heads of appropriate DoD Components. The ASD(HD&ASA) will immediately notify the Secretary of Defense and the USD(P) when this authority is exercised.

(4) Coordinate, or consult on, special event support policy with other Federal departments and agencies (which may include the Department of Homeland Security (DHS), the Federal Bureau of Investigation (FBI), the U.S. Secret Service (USSS), and the Federal Emergency Management Agency (FEMA)) and with other qualifying entities as appropriate.

(5) Develop, coordinate, and oversee the implementation of DoD support of special events.

(6) Through the CJCS, monitor the activation, deployment, and employment of DoD personnel, facilities, and other resources involved in DoD support of special events.

(7) Coordinate DoD support of special events with the General Counsel of the Department of Defense (GC, DoD) and the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense (USD(C)/CFO).

(8) Coordinate with the Assistant Secretary of Defense for Public Affairs (ASD(PA)) to ensure that information relating to DoD support of special events receives appropriate dissemination using all approved media.

(9) Represent the Department of Defense regarding special events to other Federal departments and agencies, State and local authorities, and qualifying entities, including designating the Department of Defense representatives for the working groups identified in § 183.6(b) of this part.

(10) Manage, in conjunction with the USD(C)/CFO, the Support for International Sporting Competitions (SISC) Defense Account.

(11) In accordance with section 5802 of Public Law 104–208, as amended, notify the congressional defense committees of DoD plans to obligate funds in the SISC Defense Account.

(12) In accordance with title 10 U.S.C. 2564, submit an annual report to Congress, no later than January 30 of each year following a year in which the Department of Defense provides assistance under title 10 U.S.C. 2564, detailing DoD support to certain sporting competitions.

(c) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall coordinate on DoD support of special events and, in coordination with the CJCS, provide advice regarding the effect the requested support will have on readiness and military operations.

(d) The USD(C)/CFO shall:

(1) Coordinate on DoD support of special events, and provide advice regarding the effect on the DoD budget and on DoD financial resources.

(2) Maintain the SISC Defense Account in conjunction with the ASD(HD&ASA).

(e) The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) shall coordinate on DoD logistical support of special events.

(f) The GC, DoD shall coordinate and provide legal counsel on DoD support of special events.

(g) The ASD(PA) shall provide policy guidance and review, coordinate, and approve requests for ceremonial and entertainment support for special events covered by this part, in accordance with DoDD 5410.18 (see *http://www.dtic.mil/whs/directives/corres/pdf/541018p.pdf*), DoDI 5410.19 (see *http://www.dtic.mil/whs/directives/corres/pdf/541019p.pdf*) and DoDD 5122.05 (see *http://www.dtic.mil/whs/directives/corres/pdf/512205p.pdf*).

(h) The Heads of the DoD Components shall:

(1) Designate and maintain an office of primary responsibility (OPR) for special events or a special events coordinator, and provide that OPR designation and contact information to the CJCS within 60 days of the publication of this part. Changes to OPR designation and contact information shall be provided to the CJCS within 30 days of the change.

(2) Provide personnel, equipment, and support of special events as directed.

(3) Ensure that personnel supporting special events comply with applicable antiterrorism and force protection training and standards.

(4) Provide other support of special events as directed.

(i) The CJCS shall:

(1) Provide planning guidance to DoD Components for all special events for which DoD support may require the employment of military forces or centralized command and control.

(2) Review all requests for DoD support of special events and, in coordination with the USD(P&R),

provide advice on the effect that the requested support will have on readiness and military operations.

(3) Prepare, staff, and issue orders and messages on DoD support of special events that has been approved by authorized DoD officials.

(4) Issue guidance to the Combatant Commanders on the implementation of this part.

(5) Process requests for DoD support of special events.

(6) Maintain sufficient staff to manage the day-to-day operational aspects of DoD support of special events.

(7) Manage and maintain equipment that is procured to support DoD special events.

(i) Establish and operate a system for delivering DoD assets to authorized recipients and for recovering loaned assets at the conclusion of the event.

(ii) Ensure the civil authorities and qualifying entities authorized to accept DoD assets provide a surety bond or other suitable insurance protection to cover the cost of lost, stolen, or damaged DoD property.

(iii) Plan and program for the life-cycle replacement of special events equipment procured under title 10 U.S.C. 2553, 2554, and 2564.

(iv) Procure goods and services through contracting, when necessary and authorized by law.

(8) Administer the expenditure of appropriated funds, and ensure that the Department of Defense is reimbursed for its support of special events when required by law or DoD policy.

(i) With the assistance of the DoD Components, provide cost estimates of DoD support to a special event that is under consideration for approval.

(ii) Upon approval, administer the execution of funding for DoD support of special events.

(iii) At the conclusion of DoD support to a special event, collect and provide a financial accounting for all DoD funds expended in support of that special event.

(9) Establish and maintain effective liaison with DoD Components for the timely exchange of information about special event projects.

(10) Provide other support of special events as directed.

(j) The Chief, National Guard Bureau (NGB), under the authority, direction, and control of the Secretary of Defense through the Secretary of the Army and the Secretary of the Air Force, shall:

(1) Serve as the channel of communications for all matters pertaining to the National Guard between DoD Components and the States in accordance with DoDD 5105.77 (see *http://www.dtic.mil/whs/directives/corres/pdf/510577p.pdf*).

(2) Report National Guard special event support of civil authorities or qualifying entities when using Federal resources, equipment, or funding to the National Joint Operations and Intelligence Center.

(3) Serve as an advisor to the Combatant Commanders on National Guard matters pertaining to the combatant command missions, and support planning and coordination for DoD support of special events as requested by the CJCS or the Combatant Commanders.

(4) Ensure that National Guard appropriations are appropriately reimbursed for special event activities.

(5) Advocate for needed special event capabilities.

(6) Develop, in accordance with DoDD 5105.77 and in coordination with the Secretaries of the Army and Air Force and the ASD(HD&ASA), guidance regarding this part as it relates to National Guard matters.

§ 183.6. Procedures.

(a) *General Provisions.* (1) This section provides the basic procedures for DoD support to special events.

(2) As appropriate, amplifying procedures regarding DoD support to special events shall be published separately and maintained by the Office of the ASD(HD&ASA) and released as needed in the most effective medium consistent with DoD Directive 8320.02 (see *http://www.dtic.mil/whs/directives/corres/pdf/832002p.pdf*).

(b) *Special Event Process.* (1) *Engagement.* (i) Engagement may be initiated by the Department of Defense, civil authorities, or qualifying entities. If the initial engagement is not a written request for assistance (RFA), representatives of the ASD(HD&ASA) and the Joint Staff will confer to determine actual requirements.

(ii) Engagement may involve informational briefings and meetings between DoD representatives and special event organizers, civil authorities, or qualifying entities. These informal engagements may result in non-DoD entities submitting an RFA to the DoD Executive Secretary, requesting DoD support for a special event.

(iii) Once an RFA is received, it will be sent to the ASD(HD&ASA) and the CJCS simultaneously for staffing and recommendation. Additional engagement with the requestor may be required to quantify the scope and magnitude of the support requested.

(2) *Planning.* (i) The direction and focus of DoD special-event planning will depend on the nature of the event and scope and magnitude of the support requested or anticipated. International events may require additional planning, procedures, and coordination with the government of the host country.

(ii) For National Special Security Events (NSSEs) and events that may require the employment of military forces and centralized command and control, the CJCS will issue a planning order requesting a Combatant Commander to initiate planning and notify potential supporting commands or organizations and the Chief, NGB, as appropriate. When possible, established CJCS-directed planning procedures will be used for the Combatant Commander to provide an assessment and request for forces.

(A) The NSSE designation process generally is initiated by a formal written request to the Secretary of Homeland Security by the State or local government hosting the event. In other situations where the event is federally sponsored, an appropriate Federal official will make the request.

(B) Once the request is received by DHS, the USSS and the FBI will send an NSSE questionnaire to the responsible host official for completion. The request, completed questionnaires, and other supporting information are reviewed by the NSSE Working Group (which includes a non-voting DoD member), which provides a recommendation to the Secretary of Homeland Security regarding NSSE designation.

(C) The Secretary of Homeland Security makes the final determination to designate an event as an NSSE pursuant to Homeland Security Presidential Directive 7 (see *http://www.gpo.gov/fdsys/pkg/PPP-2003-book2/pdf/PPP-2003-book2-doc-pg1739.pdf*).

(iii) There are numerous events where DoD support should be anticipated and a planning order issued to the appropriate Combatant Commander. These include, but are not limited to:

(A) The President's State of the Union Address or other addresses to a Joint Session of Congress.

(B) Annual meetings of the United Nations General Assembly.

(C) National Presidential nominating conventions.

(D) Presidential inaugural activities.

(E) International summits or meetings.

(F) State funerals.

(G) The National Boy Scout Jamboree.

(H) Certain international or domestic sporting competitions.

(iv) There are other events that the Department of Defense supports that do not involve the assignment of military forces or centralized command and control by Combatant Commanders, which include planning requirements

by the host organizations. These include, but are not limited to:

(A) Military Department or Service-sponsored events, such as:

(*1*) The Marine Corps Marathon.

(*2*) The Army 10-Miler.

(*3*) Navy Fleet Weeks.

(*4*) Installation or Joint Service Open Houses.

(*5*) Service or Joint Air Shows.

(B) Community relations activities authorized in accordance with DoDI 5410.19.

(v) The Department of Defense may provide support to certain sporting events that are included under subsection (c) of section 2564 of title 10, U.S.C., by providing technical, contracting, and specialized equipment support. These events may be funded by the SISC Defense Account pursuant to title 10 U.S.C. 2564 and include:

(A) The Special Olympics.

(B) The Paralympics.

(C) Sporting events sanctioned by the United States Olympic Committee (USOC) through the Paralympic Military Program.

(D) Other international or domestic Paralympic sporting events that are held in the United States or its territories, governed by the International Paralympic Committee, and sanctioned by the USOC:

(*1*) For which participation exceeds 100 amateur athletes.

(*2*) In which at least 10 percent of the athletes participating in the sporting event are either members or former members of U.S. Military Services who are participating in the sporting event based upon an injury or wound incurred in the line of duty or veterans who are participating in the sporting event based upon a service-connected disability.

(vi) Planning for DoD support to the Olympics and certain other sporting events requires additional considerations.

(A) Subsections (a) and (b) of section 2564 of title 10, U.S.C., authorize the Secretary of Defense to provide assistance for the Olympics and certain other sporting events. Unless the event meets the specific requirements stated in paragraph (b)(2)(v) of this section, the Attorney General must certify that DoD security and safety assistance is necessary to meet essential security and safety needs of the event.

(B) The Department of Defense, led by the ASD(HD&ASA), will collaborate with the CJCS, the Department of Justice, including the FBI, and other appropriate DoD Components and Federal departments or agencies, usually as part of a Joint Advisory Committee (JAC), to provide a recommendation to the Attorney General on what categories of support the Department of Defense may be able to provide to meet essential security and safety needs of the event.

(C) Support other than safety and security may be authorized for sporting events, but only to the extent that:

(*1*) Such needs cannot reasonably be met by a source other than the Department of Defense.

(*2*) Such assistance does not adversely affect military preparedness.

(*3*) The requestor of such assistance agrees to reimburse the Department of Defense, in accordance with the provisions of title 10 U.S.C. 377, 2553–2555, and 2564; title 31 U.S.C. 1535–1536; and other applicable provisions of law.

(vii) Types of support that the Department of Defense can provide include, but are not limited to:

(A) Aviation.

(B) Communications (*e.g.,* radios, mobile telephones, signal integrators).

(C) Security (*e.g.,* magnetometers, closed-circuit televisions, perimeter alarm systems, undercarriage inspection devices).

(D) Operations and Command Centers (*e.g.,* design and configuration, video walls).

(E) Explosive ordnance detection and disposal (technical advice, explosive ordnance disposal teams, explosive detector dog, dog teams).

(F) Logistics (transportation, temporary facilities, food, lodging).

(G) Ceremonial support (in coordination with the ASD(PA)).

(H) Chemical, biological, radiological, and nuclear threat identification, reduction, and response capabilities.

(I) Incident response capabilities (in coordination with the Department of Justice, DHS, the Department of Health and Human Services, and in consultation with appropriate State and local authorities).

(viii) DoD personnel support of special events is provided using a total force sourcing solution that may include Active Duty and Reserve Component military personnel, DoD civilian personnel, and DoD contractor personnel. The Department of Defense also may decide to respond to requests for assistance by approving, with the consent of the Governor(s) concerned, National Guard forces performing duty pursuant to title 32 U.S.C. 502.

(A) National Guard personnel conducting support of special events while on State active duty, at the direction of their Governor or Adjutant General, are not considered to be providing DoD support of special events.

(B) This part does not limit or affect Department of Defense and National Guard personnel volunteering to support special events during their non-duty time. This volunteer support is not considered as part of DoD support of special events. Volunteers are prohibited from obligating or using DoD resources to support a special event while in a volunteer status except as authorized by separate statute or authority.

(3) *Coordination.* (i) Coordination of DoD support of special events will likely take place simultaneously with engagement and planning; operate across the full spectrum of strategic, operational, and tactical levels; and occur internally among DoD Components and externally with supported civil authorities and qualifying entities.

(A) Policy coordination at the departmental level between the Department of Defense and other Federal departments or agencies is the responsibility of the ASD(HD&ASA). Other DoD Components may send representatives to these meetings with the prior concurrence of the ASD(HD&ASA). Standing departmental-level special events coordination meetings include:

(*1*) USSS-led NSSE Working Group.

(*2*) DHS-led Special Events Working Group.

(*3*) Department of State, Bureau of Diplomatic Security-led International Sporting Event Group.

(B) Coordination within the Department of Defense is led by the ASD(HD&ASA) and is facilitated by the CJCS for the Combatant Commands and other joint commands and by other DoD Component Heads for their constituent elements.

(C) The CJCS will work with the Military Service Chiefs, the Chief of the National Guard Bureau, and the Heads of DoD Components when subject matter expertise is needed for the event organizers. This will be based upon location and other criteria, as needed.

(ii) Inputs to the DHS-produced Integrated Federal Support Overview (IFSO) will be solicited by the CJCS and sent to the ASD(HD&ASA) for consolidation and deconfliction prior to final submission to DHS. DoD Component Heads not tasked by the Joint Staff will submit their input directly to the ASD(HD&ASA).

(iii) RFAs for DoD support will adhere to the following:

(A) An RFA for DoD support to a special event may be made by Federal, State, or local civil authorities, or by qualifying entities.

(B) RFAs will be in writing and addressed to the Secretary of Defense, the Deputy Secretary of Defense, or the

DoD Executive Secretary, 1000 Defense, Pentagon, Washington, DC 20301–1000. DoD Components who receive RFAs directly from the requestor will immediately forward them to the DoD Executive Secretary for disposition, distribution, and tracking.

(C) At a minimum, the RFA will be distributed to the ASD(HD&ASA) and the CJCS for staffing and recommendation. If the RFA is for a single capability for which a DoD Component is the OPR or serves as a DoD Executive Agent, the RFA is sent to that Component for action with an information copy provided to the ASD(HD&ASA) and the CJCS.

(D) Vetting of RFAs will be in accordance with the DoD Global Force Management process and consistent with criteria published in DoD 8260.03–M, Volume 2 (see *http://www.dtic.mil/whs/directives/corres/pdf/826003m_vol2.pdf*).

(E) Heads of DoD Components will consult with the DoD Executive Secretary on which DoD official will communicate DoD special event support decisions to the requesting authorities.

(4) *Execution.* Execution of DoD support of special events is a shared responsibility. The scope and magnitude of the support being provided will determine the OPR and level of execution.

(i) When joint military forces or centralized command and control of DoD support to a special event are anticipated or required, a Combatant Commander may be identified as the supported commander in a properly approved order issued by the CJCS. The designated Combatant Command shall be the focal point for execution of DoD support to that special event with other DoD Components in support. Reporting requirements shall be in accordance with the properly approved order issued by the CJCS and standing business practices.

(ii) When there are no joint military forces required and there is no need for centralized command and control, DoD support of special events shall be executed by the CJCS or the Head of a DoD Component, as designated in a properly approved order or message issued by the CJCS. Oversight of DoD support will be provided by the ASD(HD&ASA).

(iii) As described in the Joint Action Plan for Developing Unity of Effort, when Federal military forces and State military forces are employed simultaneously in support of civil authorities in the United States, appointment of a dual-status commander is the usual and customary command and control arrangement. Appointment of a dual-status commander requires action by the President and the appropriate Governor (or their designees).

(5) *Recovery.* (i) Durable, non-unit equipment procured by the Department of Defense to support a special event shall be retained by the CJCS for use during future events in accordance with § 183.5(i)(7) of this part.

(ii) An after-action report shall be produced by the Combatant Command or OPR and sent to the ASD(HD&ASA) and the CJCS within 60 days of completion of the event.

Dated: April 6, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–9148 Filed 4–16–12; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0359; FRL–9639–5]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of a revision to the Pinal County Air Quality Control District portion of the Arizona State Implementation Plan (SIP). This action was proposed in the **Federal Register** on June 18, 2001 and concerns particulate matter (PM) emissions from stationary sources. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs Arizona to correct rule deficiencies.

DATES: *Effective Date:* This rule is effective on May 17, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2008–0359 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Proposed Action

On June 18, 2001 (66 FR 32783), EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the Arizona SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
PCAPCD	5–24–1032	Federal Enforceable Minimum Standard of Performance-Process Particulate Emissions.	02/22/95	11/27/95

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions include the following:

1. The rule enforceability is limited, because it does not contain periodic monitoring requirements.

2. The rule does not state the test method for PM.

3. The rule allows discretion of the Control Officer to determine whether the manner of control of fugitive emissions is satisfactory.

4. The rule does not require recordkeeping for at least two years.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments on Rule 5–24–1032.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the Arizona SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. As a result, sanctions will not be imposed under section 179 of the Act according to 40 CFR 52.31 because the PM source category is small and the attainment plan does not rely on the rule. Note that the submitted rule has been adopted by the PCAQCD, and EPA's final limited disapproval does not prevent the local agency from enforcing it. The limited disapproval also does not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf.*

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and limited approvals/limited disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this limited approval/limited disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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.

Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

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

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on May 17, 2012.

L. Petitions for Judicial Review

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 June 18, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: February 15, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(84)(i)(M) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(84) * * *

(i) * * *

(M) Rule 5–24–1032, ''Federally Enforceable Minimum Standard of Performance—Process Particulate Emissions,'' codified February 22, 1995.

* * * * *

[FR Doc. 2012–9069 Filed 4–16–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110707371–2136–02]

RIN 0648- XB145

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Trimester 1 Longfin Squid Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the directed fishery for longfin squid (longfin) in the Exclusive Economic Zone (EEZ) for the remainder of Trimester 1, effective 0001 hours, April 17, 2012. Vessels issued a Federal permit to harvest longfin may not fish for, possess, or land more than 2,500 lb (1.13 mt) of longfin per trip for the remainder of Trimester 1 (through April 30, 2011). This action is necessary to prevent the longfin fishery from exceeding the butterfish mortality cap for Trimester 1.

DATES: Effective 0001 hours, April 17, 2012, through 2400 hours, April 30, 2012.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, 978–675–2179, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the longfin and butterfish fisheries are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and

Butterfish Fishery Management Plan (FMP). The procedures for setting the annual initial specifications are described in § 648.22.

The longfin DAH for the 2012 fishing year (FY) is 22,220 mt, and is allocated into three trimesters: Trimester 1 (January 1–April 30) is allocated 43 percent of the quota (9,555 mt); Trimester 2 (May 1–August 31) is allocated 17 percent of the quota (3,777 mt); and Trimester 3 (September 1–December 31) is allocated 40 percent of the quota (8,888 mt) (77 FR 16472, March 21, 2012).

The regulations also require the specification of a butterfish mortality cap in the longfin fishery, which is equal to 75 percent of the butterfish ABC, and accounts for all butterfish discards and landings caught on trips that land over 2,500 lb (1.13 mt) of longfin. The remaining 25 percent of the butterfish ABC is allocated for butterfish landed in the directed longfin fishery, as well as in other fisheries, including trips landing less than 2,500 lb (1.13 mt) of longfin. The butterfish ABC for FY 2012 is 1,811 mt, which corresponds to a butterfish mortality cap of 1,436 mt (75 percent of 1,811 mt). The butterfish mortality cap is also allocated by trimester: Trimester 1 is allocated 65 percent of the butterfish mortality cap (933.4 mt); Trimester 2 is allocated 3.3 percent (47.4 mt); and Trimester 3 is allocated 31.7 percent (455.2 mt).

Section 648.24 requires NMFS to close the directed longfin fishery in the EEZ when 80 percent of the Trimester I butterfish mortality cap (747 mt) is projected to be harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of longfin permits at least 72 hr before the effective date of the closure; and publish notification of the closure in the **Federal Register**.

This action announces that NMFS has determined, based on catch data from observed trips, dealer reports, and other available information, that 80 percent of the Trimester 1 butterfish mortality cap is projected to be harvested. Therefore, effective 0001 hours, April 17, 2012, the Trimester 1 directed longfin fishery is closed and vessels issued Federal permits for longfin may not retain or land more than 2,500 lb (1.13 mt) of longfin per trip or calendar day. The directed fishery will reopen at 0001 hours, May 1, 2012.

Classification

This action is required by 50 CFR part 648, and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. This action closes the Trimester 1 directed longfin fishery through April 30, 2012, under current regulations. The regulations at § 648.24 require such action to ensure that longfin vessels do not exceed the 2012 Trimester 1 butterfish mortality cap. Data indicating the longfin fleet will have landed at least 80 percent of the 2012 butterfish mortality cap on trips that land 2,500 lb or more of longfin have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the butterfish mortality cap for Trimester 1 will be exceeded, thereby undermining the conservation objectives of the FMP. Such overage would have to be deducted from that portion of the bycatch cap allocated to Trimester 3. This would have adverse economic consequences for those that fish for longfin in the fall. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: April 12, 2012.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–9230 Filed 4–12–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324–1265–02]

RIN 0648–BC02

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) May 1, 2012. Comments on this final rule must be received no later than May 17, 2012.

ADDRESSES: You may submit comments, identified by FDMS docket number NOAA–NMFS–2010–0194 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- *Fax:* 206–526–6736, Attn: Colby Brady
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Colby Brady.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Colby Brady (Northwest Region, NMFS), phone: 206–526–6117, fax: 206–526–6736, *colby.brady@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action*. Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS.

On November 3, 2010, NMFS published a proposed rule to implement the 2011–2012 harvest specifications and management measures for most species of the Pacific Coast groundfish fishery (75 FR 67810). The final rule to implement the 2011–12 harvest specifications and management measures for most species of the Pacific Coast Groundfish Fishery was published on May 11, 2011 (76 FR 27508). This final rule was subsequently amended by several inseason actions (76 FR 39313, 76 FR 67092, 76 FR 79122, 77 FR 12503). On September 27, 2011, NMFS published a proposed rule to implement final 2012 specifications for overfished species and assessed flatfish species pursuant to Secretarial Amendment 1 to the Groundfish FMP (76 FR 59634). That final rule was effective January 1, 2012. These specifications and management measures are codified in the CFR (50 CFR part 660, subparts C through G).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with the States of Washington, Oregon, and California, at its March 2–March 7, 2012, meeting in Sacramento, California. The Council recommended adjusting the biennial groundfish management measures for the remainder of the biennial period to respond to updated fishery information and an additional inseason management need to adjust the trawl RCA boundaries. The adjustment to fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of 2012. Estimated mortality of overfished and target species are the result of management measures designed to achieve, to the extent possible, but not exceed, annual catch limits (ACLs) of target species while fostering the rebuilding of overfished stocks by remaining within their rebuilding ACLs.

Trawl Rockfish Conservation Area

The Council recommended, and NMFS is implementing, an adjustment to the shoreward line of the trawl Rockfish Conservation Area (RCA) in Washington State, south of Cape Alava and in northern California, north Cape Mendocino from the 75 fathom line (137-m) to the 100 fathom line (183-m) during Period 3, (May 1–June 30) and Period 5, (September 1–August 31) from 40°10′ N. lat. to 48°10′ N. lat.

The Council received a request to review the effects of an adjustment to the shoreward boundary line of the trawl RCA south of 48°10′ N. lat and north of 40°10′ N. lat. from 75 fm to 100 fm for Period 3 (May 1–June 30) and Period 5 (September 1–October 31) to open some additional shelf areas. The Council considered time-weighted historical average bycatch rates stratified by depth and newly available observer data for this area in Periods 3 and 5, in the area shoreward of 100 fm, verses the area shoreward of 75 fm, which did indicate that the probability of encountering canary rockfish, darkblotched rockfish, Pacific ocean perch (POP), and yelloweye rockfish could be higher than if status quo shoreward boundaries remained in place. However, attainments of ACLs for these rebuilding species was low under IFQ management in 2011, and attainments of ACLs are currently (through March 5, 2012) tracking low in 2012 (0.6%, 5.8%, 2.9% and 0.2% respectively). Finally, the Council considered the potential positive impact of individual accountability, a goal of the trawl rationalization program, when making the decision to adjust the shoreward line of the trawl Rockfish Conservation Area (RCA).

Therefore, the Council recommended, and NMFS is implementing a shift to the shoreward line of the trawl Rockfish Conservation Area (RCA) in Washington State, south of Cape Alava and in northern California, north Cape Mendocino from the 75 fathom line (137-m) to the 100 fathom line (183-m) during Period 3 (May 1–June 30), and Period 5 (September 1–August 31), from 40°10′ N. lat. to 48°10′ N. lat.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

This inseason adjustment is also taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is in accordance with 50 CFR part 660, the regulations implementing the FMP. This action is based on the most recent information available.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b)(3)(B) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available information upon which the changes to the trawl Rockfish Conservation Area (RCA) management measure changes are based was originally provided to the Council, and the Council made its recommendations, at its March 2–7, 2012. The Council recommended that these changes be implemented by May 1, 2012. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off northern California to Washington State.

These adjustments to management measures must be implemented in a timely manner to allow fishermen north of 40°10′ N. lat. to prosecute their intended fishing strategies under trawl rationalization. If this rule is not implemented immediately, the public could have incorrect information regarding boundaries used, and allowed fishing activities for groundfish fisheries management, which would cause confusion and be inconsistent with the intent of the Council. It would be contrary to the public interest to delay implementation of these changes until after public notice and comment, because making this regulatory change immediately allows harvest as intended by the Council in fisheries that are important to coastal communities in a manner that prevents ACLs of overfished species from being exceeded.

No aspect of this action is controversial and no change in operating practices in the fishery is required from those intended in this inseason adjustment.

Delaying these changes would also keep management measures in place that are not based on the best available information. Accordingly, for the

reasons stated above, NMFS finds good cause to partially waive prior notice and comment and the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: April 12, 2012.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Table 1 (North) to part 660, subpart D is revised to read as follows:

BILLING CODE 3510–22–P

Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 04012012

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 48°10' N. lat.	shore - modified[2/] 200 fm line[1/]	shore - 200 fm line[1/]	shore - 150 fm line[1/]		shore - 200 fm line[1/]	shore - modified[2/] 200 fm line[1/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[1/] - modified[2/] 200 fm line[1/]	75 fm line[1/] - 150 fm line[1/]	100 fm line[1/] - 150 fm line[1/]	100 fm line[1/] - 150 fm line[1/]	100 fm line[1/] - 150 fm line[1/]	75 fm line[1/] - 150 fm line[1/]
3	45°46' N. lat. - 40°10' N. lat.		75 fm line1/ - 200 fm line1/	100 fm line[1/] - 200 fm line[1/]	100 fm line[1/] - 200 fm line[1/]	100 fm line[1/] - 200 fm line[1/]	75 fm line[1/] - modified[2/] 200

Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 1 (North) and 1 (South) to Part 660, Subpart E.**

See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

4	**Minor nearshore rockfish & Black rockfish**	300 lb/ month
5	**Whiting**	
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.
8	**Cabezon**	
9	North of 46°16' N. lat.	Unlimited
10	46°16' N. lat. - 40°10' N. lat.	50 lb/ month
11	**Shortbelly**	Unlimited
12	**Spiny dogfish**	60,000 lb/ month
13	**Longnose skate**	Unlimited
14	**Other Fish [3/]**	Unlimited

TABLE 1 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

3/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2012–9248 Filed 4–16–12; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100223162–1268–01]

RIN 0648–XB120

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #1, #2, and #3

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

ACTION: Modification of fishing seasons and landing and possession limits; request for comments.

SUMMARY: NOAA Fisheries announces 3 inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial and recreational fisheries in the area from Cape Falcon, Oregon to Point Arena, California.

DATES: The effective dates for the inseason action are set out in this document under the heading Inseason Actions. Inseason actions remain in effect until modified by additional inseason action or superseded by the 2012 annual management measures on May 1, 2012. Comments will be accepted through May 2, 2012.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2011–0171, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0171 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–6349.
- *Fax:* 206–526–6736, Attn: Peggy Mundy.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION:

Background

In the 2011 annual management measures for ocean salmon fisheries (76 FR 25246, May 4, 2011), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2011, and 2012 salmon seasons opening earlier than May 1, 2012.

NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Prior to taking inseason action, the Regional Administrator (RA) consults with the Chairman of the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)(1)).

Management of the salmon fisheries is generally divided into two geographic areas: north of Cape Falcon (U.S./Canada Border to Cape Falcon, Oregon) and south of Cape Falcon (Cape Falcon, Oregon to the U.S./Mexico Border). The inseason actions in this document all apply south of Cape Falcon.

Inseason Actions

Inseason Action #1

The RA consulted with representatives of the Council, California Department of Fish and Game (CDFG), and Oregon Department of Fish and Wildlife (ODFW) on March 5, 2012. The information considered during this consultation related to projected abundance of Chinook salmon stocks for the 2012 salmon fishing season.

Inseason action #1 changed the minimum size limit for Chinook salmon caught in the recreational salmon fishery from Horse Mountain, California to Point Arena, California beginning April 7, 2012. The minimum size limit for this fishery will be 20 inches total length, which is reduced from 24 inches as previously announced. This action was taken to allow access to abundant 3-year old Sacramento River fall Chinook salmon. On March 5, 2012, the states recommended this action and the RA concurred; inseason action #1 took effect on April 7, 2012. This inseason action remains in effect until superseded by inseason action or implementation of 2012 annual management measures which will be effective on May 1, 2012. This inseason action is authorized by 50 CFR 660.409(b)(1).

Inseason Actions #2 and #3

The RA consulted with representatives of the Council, ODFW, and CDFG on March 6, 2012. The information considered during this consultation related to projected abundance of Chinook salmon stocks for the 2012 salmon fishing season.

Inseason action #2 adjusted the scheduled opening date for the commercial salmon fishery from Cape Falcon, Oregon to Humbug Mountain, Oregon. Inseason action #3 adjusted the scheduled opening date for the commercial salmon fishery from Humbug Mountain, Oregon to the Oregon/California Border. These fisheries will open on April 1, 2012 rather than March 15, 2012 as previously scheduled in the 2011 annual management measures. This action was taken as part of developing 2012 annual management measures to provide fisheries consistent with annual catch limits and conservation objectives, while meeting consultation standards on ESA-listed stocks. Fishery models suggested that this delay in opening would provide the best opportunity for optimal harvest without exceeding the guidelines of the FMP. On March 6, 2012, the states recommended this action and the RA concurred; inseason action #2 took effect on March 15, 2012. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

All other restrictions and regulations remain in effect as announced for the 2011 Ocean Salmon Fisheries and 2012 fisheries opening prior to May 1, 2012 (76 FR 25246, May 4, 2011).

The RA determined that the best available information indicated that the stock abundance, and catch and effort projections supported the above

inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (76 FR 25246, May 4, 2011), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, thus allowing fishers access to the available fish at the time the fish were available while ensuring that quotas are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: April 12, 2012.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–9249 Filed 4–16–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2232–03]

RIN 0648–XA711

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2012 and 2013 Harvest Specifications for Groundfish; Correction

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

ACTION: Final rule; closures; correction.

SUMMARY: The National Marine Fisheries Service (NMFS) is correcting a final rule that published on March 14, 2012, implementing the final 2012 and 2013 harvest specifications and prohibited species catch allowances for the groundfish fishery of the Gulf of Alaska (GOA). This rule corrects errors contained in a table in the document that provides the 2012 GOA non-American Fisheries Act crab vessel groundfish harvest sideboard limits.

DATES: Effective April 17, 2012 through 2400 hrs, A.l.t., December 31, 2013, and is applicable beginning March 14, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Need for Correction

NMFS published the Final 2012 and 2013 GOA Harvest Specifications in the **Federal Register** on March 14, 2012 (77 FR 15194). A table providing information on 2012 GOA non-American Fisheries Act (AFA) crab vessel groundfish harvest sideboard limits (Table 22) contained two minor errors. In Table 22 on page 15216, a **Federal Register** error omitted the final 2012 non-AFA crab vessel A season sideboard limit for catcher/processors using hook-and-line gear in the Western GOA. The correct limit is 23 metric tons. In addition, NMFS inadvertently listed ''0.0001'' as the ratio used to calculate the non-AFA crab vessel sideboard limit for catcher/processors using hook-and-line gear in the Western GOA during the B season instead of the correct ratio of ''0.0018.'' These corrections are necessary to provide the correct sideboard limits.

The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This notice corrects typographical errors to the table providing the 2012 GOA non-AFA crab vessel groundfish harvest sideboard limits, and does not change operating practices in the fisheries. The corrections described in this rule are being implemented as soon as possible to avoid confusion for participants in the fisheries.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). The corrections described in this rule are being made effective upon publication to avoid confusion for participants in the fisheries.

Correction

In the final rule published on March 14, 2012 (77 FR 15194), the following corrections are made to Table 22:

1. On page 15216, in Table 22, row 17 (the row beginning ''W Hook-and-line C/P''), column six, the blank entry ''' is corrected to read ''23.''

2. On the same page, in row 29 (the row beginning ''W Hook-and-line C/P), column four, the entry ''0.0001'' is corrected to read ''0.0018.''

Table 22 is corrected and reprinted in its entirety below.

TABLE 22—FINAL 2012 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season/Gear	Area/Component/Gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2012 TACs	Final 2012 non-AFA crab vessel sideboard limit
Pollock	A Season January 20–March 10.	Shumagin (610)	0.0098	5,797	57
		Chirikof (620)	0.0031	14,023	43
		Kodiak (630)	0.0002	5,787	1
	B Season March 10–May 31.	Shumagin (610)	0.0098	5,797	57
		Chirikof (620)	0.0031	17,221	53
		Kodiak (630)	0.0002	2,589	1
	C Season August 25–October 1.	Shumagin (610)	0.0098	9,338	92
		Chirikof (620)	0.0031	7,282	23
		Kodiak (630)	0.0002	8,986	2
	D Season October 1–November 1.	Shumagin (610)	0.0098	9,338	92
		Chirikof (620)	0.0031	7,282	23
		Kodiak (630)	0.0002	8,986	2
	Annual	WYK (640)	0.0000	3,244	0
		SEO (650)	0.0000	10,774	0
Pacific cod	A Season [1] January 1–June 10.	W Jig	0.0000	12,614	0
		W Hook-and-line CV	0.0004	12,614	5
		W Hook-and-line C/P	0.0018	12,614	23
		W Pot CV	0.0997	12,614	1,258
		W Pot C/P	0.0078	12,614	98
		W Trawl CV	0.0007	12,614	9
		C Jig	0.0000	25,623	0
		C Hook-and-line CV	0.0001	25,623	3
		C Hook-and-line C/P	0.0012	25,623	31
		C Pot CV	0.0474	25,623	1,215
		C Pot C/P	0.0136	25,623	348
		C Trawl CV	0.0012	25,623	31
	B Season [2] Jig Gear: June 10–December 31. All other gears: September 1–December 31.	W Jig	0.0000	8,410	0
		W Hook-and-line CV	0.0004	8,410	3
		W Hook-and-line C/P	0.0018	8,410	15
		W Pot CV	0.0997	8,410	838
		W Pot C/P	0.0078	8,410	66
		W Trawl CV	0.0007	8,410	6
		C Jig	0.0000	17,082	0
		C Hook-and-line CV	0.0001	17,082	2
		C Hook-and-line C/P	0.0012	17,082	20
		C Pot CV	0.0474	17,082	810
		C Pot C/P	0.0136	17,082	232
		C Trawl CV	0.0012	17,082	20
	Annual	E inshore	0.0110	1,774	20
		E offshore	0.0000	197	0
Sablefish	Annual, trawl gear	W	0.0000	356	0
		C	0.0000	1,152	0
		E	0.0000	271	0
Flatfish, shallow-water	Annual	W	0.0059	13,250	78
		C	0.0001	18,000	2
		E	0.0000	5,779	0
Flatfish, deep-water	Annual	W	0.0035	176	1
		C	0.0000	2,308	0
		E	0.0000	2,642	0
Rex sole	Annual	W	0.0000	1,307	0
		C	0.0000	6,412	0
		E	0.0000	1,893	0
Arrowtooth flounder	Annual	W	0.0004	14,500	6
		C	0.0001	75,000	8
		E	0.0000	13,800	0
Flathead sole	Annual	W	0.0002	8,650	2
		C	0.0004	14,500	6
		E	0.0000	6,269	0
Pacific ocean perch	Annual	W	0.0000	2,102	0
		C	0.0000	11,263	0
		E	0.0000	3,553	0
Northern rockfish	Annual	W	0.0005	2,156	1
		C	0.0000	3,351	0
Shortraker rockfish	Annual	W	0.0013	104	0
		C	0.0012	452	1
		E	0.0009	525	0

TABLE 22—FINAL 2012 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season/Gear	Area/Component/Gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2012 TACs	Final 2012 non-AFA crab vessel sideboard limit
Other rockfish	Annual	W	0.0035	44	0
		C	0.0033	606	2
		E	0.0000	430	0
Pelagic shelf rockfish	Annual	W	0.0017	409	1
		C	0.0000	3,849	0
		E	0.0000	860	0
Rougheye rockfish	Annual	W	0.0067	80	1
		C	0.0047	850	4
		E	0.0008	293	0
Demersal shelf rockfish	Annual	SEO	0.0000	293	0
Thornyhead rockfish	Annual	W	0.0047	150	1
		C	0.0066	766	5
		E	0.0045	749	3
Atka mackerel	Annual	Gulfwide	0.0000	2,000	0
Big skate	Annual	W	0.0392	469	18
		C	0.0159	1,793	29
		E	0.0000	1,505	0
Longnose skate	Annual	W	0.0392	70	3
		C	0.0159	1,879	30
		E	0.0000	676	0
Other skates	Annual	Gulfwide	0.0176	2,030	36
Squids	Annual	Gulfwide	0.0176	1,148	20
Sharks	Annual	Gulfwide	0.0176	6,028	106
Octopuses	Annual	Gulfwide	0.0176	1,455	26
Sculpins	Annual	Gulfwide	0.0176	5,731	101

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540 (f), 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: April 11, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–9090 Filed 4–16–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 74
Tuesday, April 17, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1405]

RIN 7100–AD64

Definition of ''Predominantly Engaged in Financial Activities''; Correction

AGENCY: Board of Governors of the Federal Reserve System (''Board'').

ACTION: Supplemental notice of proposed rulemaking and request for comment; correction.

SUMMARY: On April 10, 2012, the Board published in the **Federal Register** a supplemental notice of proposed rulemaking and request for comment that would establish the criteria for determining whether a company is ''predominantly engaged in financial activities'' for purposes of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. That **Federal Register** notice omitted the instructions for submitting comments. This document corrects that omission.

DATES: The comment period closing date for the proposed rule published April 10, 2012, at 77 FR 21494 remains May 25, 2012.

ADDRESSES: You may submit comments on the proposed rule published April 10, 2012, at 77 FR 21494, identified by Docket No. 1405 and RIN 7100–AD64 by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers 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 *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* 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.

FOR FURTHER INFORMATION CONTACT: Laurie S. Schaffer, Associate General Counsel, (202) 452–2272, Paige E. Pidano, Senior Attorney, (202) 452–2803 or Christine E. Graham, Senior Attorney, (202) 452–3005, Legal Division; Mark Van Der Weide, Senior Associate Director, (202) 452–2263, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunication Device for the Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION: On April 10, 2012, the Board published in the **Federal Register** a supplemental notice of proposed rulemaking and request for comment that would establish the criteria for determining whether a company is ''predominantly engaged in financial activities'' for purposes of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. That **Federal Register** notice omitted the instructions for submitting comments. This document corrects that omission.

By order of the Board of Governors of the Federal Reserve System, April 12, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–9210 Filed 4–16–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0336; Directorate Identifier 2011–NM–213–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–500 series airplanes. This proposed AD was prompted by reports of chem-mill step cracking on the aft lower lobe fuselage skins. This proposed AD would require inspections of the fuselage skin at the chem-mill steps, and repair if necessary. We are proposing this AD to detect and correct cracking on the aft lower lobe fuselage skins, which could result in decompression of the airplane.

DATES: We must receive comments on this proposed AD by June 1, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0336; Directorate Identifier 2011–NM–213–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

More than 300 incidents of skin chem-mill cracks on 26 airplanes have been reported from body station (STA) 727 to 1016, and from stringer S–14 to S–25 (left and right sides). The affected airplanes had accumulated between 29,808 and 53,454 total flight cycles. Most of the skin cracks were found aft of STA 747 on the left side. Several of the reported cracks occurred in multiple adjacent bays. On the existing skin panel assembly, the doubler is chem-milled to the skin. At these skin panel locations on the airplanes, the loads could cause a condition where skin cracks could form along the longitudinal edges of the doubler. This condition, if not corrected, could result in decompression of the airplane.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2012–0336. ''Related investigative actions'' and ''corrective actions'' are those actions specified in the service information that are necessary to address the identified unsafe condition.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require various repetitive inspections for cracking in the fuselage skin at the chem-mill steps. For airplanes on which cracking is found, this proposed AD would require doing one of the following:

- A time-limited repair, followed by related investigative actions (including a general visual inspection for loose or missing fasteners; an internal detailed inspection and a high frequency eddy current (HFEC) inspection for disbonding and cracks of the bonded doubler); corrective actions if necessary (i.e., replacing any loose or missing fastener, and contacting Boeing for repair instructions and doing the repair); and making the time-limited repair permanent; or
- A permanent repair, including a detailed inspection of the bonded doubler for disbonding, and an HFEC inspection for cracks in the bonded doubler; and repair of any cracks and disbonding. Accomplishment of the permanent repair would terminate the repetitive inspections required by this proposed AD for the area(s) of the repair only.

Difference Between the Proposed AD and the Service Information

Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 91 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	23 work-hours × $85 per hour = $1,955 per inspection cycle.	$0	$1,955 per inspection cycle.	$177,905 per inspection cycle.

We estimate the following costs to do any necessary corrective actions that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these corrective actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspection	2 work-hours × $85 per hour = $170	$0	$170
Repair	7 work-hours × $85 per hour = $595	$0	$595

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2012–0336; Directorate Identifier 2011–NM–213–AD.

(a) Comments Due Date

We must receive comments by June 1, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–500 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of chem-mill step cracking on the aft lower lobe fuselage skins. We are issuing this AD to detect and correct step cracking on the aft lower lobe fuselage skins, which could result in decompression of the airplane.

(f) Compliance

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

(g) Inspection

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011, except as required by paragraph (i)(1) of this AD: Do an external detailed inspection; and, as applicable, do an external or internal subsurface eddy current, magneto optic imager, or C-scan inspection; to detect cracks in the fuselage skin at the chem-mill steps; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011.

(h) Repair

If any crack is found during any inspection required by paragraph (g) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011, do all the actions specified in either paragraph (h)(1) or (h)(2) of this AD.

(1) Do a time-limited repair; followed by applicable related investigative actions, corrective actions, and making the time-limited repair permanent; in accordance with Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011, except as required by paragraph (i)(2) of this AD.

(2) Do a permanent repair, including a detailed inspection of the bonded doubler for disbonding and a high frequency eddy current inspection for cracks of the bonded doubler, in accordance with Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011. Repair any cracks and disbonding before further flight, in accordance with Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011, except as required by paragraph (i)(2) of this AD. Accomplishment of the permanent repair terminates the repetitive inspections required by this AD for the area(s) of the repair only.

(i) Exceptions to Service Bulletin Specifications

The exceptions specified in paragraphs (i)(1) and (i)(2) of this AD apply to this AD.

(1) Where Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011, specifies a compliance time after the date on this service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager

of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*. You may also review the referenced service information in the docket at *www.regulations.gov* (refer to Docket No. FAA–2012–0336). You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 5, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9177 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 110331231–1608–02]

RIN 0694–AF19

Revisions to Authorization Validated End-User Provisions: Requirement for Notice of Export, Reexport, or Transfer (In-Country) and Clarification Regarding Termination of Conditions on VEU Authorizations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) by adding a requirement for persons shipping under Authorization Validated End-User (VEU) to send written notice of such shipments to the recipient VEU. BIS further proposes to amend the EAR to clarify that when items subject to item-specific conditions under Authorization VEU no longer require a license for export or reexport or become eligible for shipment under a license exception, as set forth in the EAR, VEUs are no longer bound by the conditions associated with such items.

DATES: Comments must be received by no later than June 18, 2012.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (*http://www.regulations.gov*). The regulations.gov ID for this rule is: BIS–2012–0005. Comments may also be submitted via email to *publiccomments@bis.doc.gov* or on paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2099B, U.S. Department of Commerce, 14th St. and Pennsylvania Ave. NW., Washington, DC 20230. Please refer to RIN 0694–AF19 in all comments and in the subject line of email comments.

FOR FURTHER INFORMATION CONTACT: Karen H. Nies-Vogel, Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th St. and Pennsylvania Avenue NW., Washington, DC 20230; by telephone: (202) 482–5991, fax: (202) 482–3911, or email: *ERC@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User (VEU)

BIS amended the EAR in a final rule on June 19, 2007 (72 FR 33646), to create a new authorization for ''validated end-users'' (VEUs) located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license.

VEUs may obtain eligible items that are on the Commerce Control List, which are identified in Supplement No. 7 to part 748 of the EAR, without having to wait for their suppliers to obtain export licenses from BIS. Eligible items may include commodities, software, and technology, except those controlled for missile technology or crime control reasons.

The VEUs listed in Supplement No. 7 to part 748 of the EAR were reviewed and approved by the U.S. Government in accordance with the provisions of section 748.15 and Supplement Nos. 8 and 9 to part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy, and Commerce, and other agencies, as appropriate, is responsible for administering the VEU program. A unanimous vote by the ERC is required to authorize VEU status for a candidate or to add any eligible items to an existing authorization. A majority vote of the ERC is required to remove VEU authorization or to remove eligible items from an existing authorization.

In addition to U.S. exporters, Authorization VEU may be used in accordance with the provisions of the EAR by foreign reexporters and by persons transferring in-country. VEUs are subject to regular reviews by the U.S. Government to ensure that items shipped under Authorization VEU are used for civilian purposes. In addition, VEUs are subject to on-site reviews as warranted.

As of the date of this rule, pursuant to section 748.15(b) of the EAR, VEUs are located in the People's Republic of China (PRC) and India.

Amendments to Section 748.15 of the EAR

Prior Notification Requirement

Through this rule, BIS proposes amending the EAR by adding paragraph (g)—Notification requirement—to section 748.15—Authorization Validated End-User. The new paragraph (g) would require persons exporting, reexporting, or transferring (in-country) under Authorization VEU to send written notification to the recipient VEU with details about their shipment within seven days of the shipment. Details that would be required in the notification include a list of the contents of the shipment and the quantity of such items that have been or will be shipped to the respective VEUs under Authorization VEU, as well as a list of the applicable Export Control Classification Numbers (ECCNs) for items included in the shipment under Authorization VEU.

The purpose of this proposed new requirement is to enhance the ability of VEUs to comply with the requirements of the VEU program. This amendment to the EAR is not the result of non-compliance with VEU requirements by existing VEUs. Rather, BIS proposes making this change at the request of VEUs. Some VEUs have informed BIS that compliance is challenging when they receive items under multiple authorizations, but are unable to determine which authorization is used for each shipment, and thus determine which set of conditions applies to the items received in each shipment. Because items may be shipped to VEUs under different forms of authorization

(*e.g.,* individual licenses, Special Comprehensive Licenses, and Authorization VEU), VEUs may receive items classified under the same ECCN but shipped under more than one form of authorization. In addition, each form of authorization may be accompanied by different conditions with which end-users must comply. With this amendment to the EAR, BIS intends to improve the ability of VEUs to determine which authorization their suppliers utilized. This will enable VEUs to better determine which set of conditions governs their use of the received item(s) more efficiently, thereby increasing the VEUs' compliance.

BIS is not mandating the form of communication (*e.g.,* fax, email, letter) for the notification, but does require that it be in a written format. As noted above, the notification must be conveyed to the VEU within seven calendar days of shipment to the VEU. Exporters, reexporters and VEUs are required to maintain the notifications they receive pursuant to their recordkeeping requirements.

Clarification Regarding Termination of Conditions on VEU Authorizations

In addition, BIS proposes amending section 748.15—Authorization Validated End-User—by adding paragraph (h)—Termination of Conditions on VEU Authorizations. The new paragraph (h) clarifies that VEUs who are subject to item-specific conditions and have received items subject to such conditions under Authorization VEU would no longer be bound by the conditions associated with the items if the items no longer require a license for export or reexport to the PRC or India (depending on the VEU's location) or become eligible for shipment under a license exception to the destination. This proposed amendment would be the same, in effect, as existing section 750.7(i) (Terminating license conditions), which generally applies to exporters and reexporters who have shipped under license. In addition, a new paragraph (i) is added to section 748.15 to remind exporters that records requirements for shipments that were made under Authorization VEU prior to the removal of a license requirement or the availability of a license exception remain subject to the review requirements of paragraph (f)(2) of section 748.15 on and after the date that the license requirement was removed or the license exception became applicable.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 12, 2011 (76 FR 50661, August 16, 2011), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provisions of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This proposed rule involves information collections previously approved by the OMB under control number 0694–0088, ''Multi-Purpose Application'', which carries a burden hour estimate of 45.8 minutes to prepare and submit form B18–748, which involves requirements in connection with Authorization VEU. BIS revised the burden hour estimate shown for the 0694–0088 collection by two minutes to include the notification requirement proposed in this rule. This revision does not represent a significant increase in burden hours for submitting information under the collection. Also, the notification requirement proposed in this rule is not expected to result in an increase in license applications submitted to BIS should the agency issue the amendment to the EAR in a final rule subsequent to the close of the proposed rule comment period.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. 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 proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

Number of Small Entities

This proposed rule would affect exporters and reexporters shipping to VEUs, as well as persons making in-country transfers to VEUs, under Authorization VEU. Currently, BIS does not collect data on the size of entities that export, reexport, or transfer in-country under Authorization VEU. Although BIS is unable to estimate the number of small entities that would be affected by this rule, it does acknowledge that this rule will impact some unknown number.

Economic Impact

This proposed rule requires exporters and reexporters shipping to VEUs, as well as persons making in-country transfers to VEUs, under Authorization VEU to provide written notification to approved VEUs about VEU shipments. It would not require extensive efforts by exporters or reexporters, or persons making in-country transfers. The proposed action is designed to coincide with other standard communications that exporters and reexporters, regardless of size, provide to their customers or parties to the transaction regarding, among other things, the description of items, sales terms, and logistics. Specifically, this rule would require only that exporters and reexporters shipping eligible items under Authorization VEU to the finite number of approved VEUs at their ''Eligible Destinations'' in the PRC and India ensure that those VEUs are notified in writing within seven days of shipping such items under the Authorization. Practically, BIS does not anticipate that any significant amount of time or other resources would be used to perform the proposed required action. BIS estimates that the notification requirement proposed in this rule will increase the burden hour estimate by two minutes per respondent. Also, the notification requirement proposed in this rule is not expected to result in an increase in license applications submitted to BIS should the agency issue the amendment to the EAR in a final rule subsequent to the close of the proposed rule comment period.

The proposed requirement is intended to facilitate compliance with the EAR in general and Authorization VEU in particular. The proposed requirement

will facilitate the VEUs' ability to comply with the specific conditions placed on their qualifications as VEUs and distinguish those conditions from conditions placed on items received under other authorizations. This will enhance accountability and ensuring effective control of items shipped under Authorization VEU and other authorizations.

In addition, this action is likely to enhance the attractiveness of shipping ''Eligible Items'' under Authorization VEU for exporters and reexporters, or persons making in-country transfers. This potential benefit outweighs any perceived inconvenience to exporters and reexporters, or persons making in-country transfers, who ship under Authorization VEU, as they retain the option to ship under an individual validated license.

In this rule, BIS also proposes to amend section 748.15—Authorization Validated End-User—by adding paragraph (h)—Termination of Conditions on VEU Authorizations. This proposed amendment would clarify that VEUs who are subject to item-specific conditions and have received items subject to such conditions under Authorization VEU would no longer be bound by the conditions associated with the items if the items no longer require a license for export or reexport to the PRC or India (depending on the VEU's location) or become eligible for shipment under a license exception to the destination. This proposed amendment would be the same, in effect, as existing section 750.7(i) (Terminating license conditions), which generally applies to exporters and reexporters who have shipped under license.

For the reasons stated, 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 proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, part 748 of the Export Administration Regulations (15 CFR parts 730–774) is proposed to be amended as follows:

PART 748—[AMENDED]

1. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011 (76 FR 50661 (August 16, 2011)).

2. Section 748.15 is amended by adding paragraphs (g), (h) and (i) to read as follows:

§ 748.15 Authorization Validated End-User (VEU).

* * * * *

(g) *Notification requirement.* Exporters and reexporters shipping under Authorization VEU and persons transferring (in-country) under Authorization VEU are required to provide the validated end-users to whom they are shipping notice of the shipment. Such notification must be conveyed to the VEU in writing and must include a list of the contents of the shipment and a list of the ECCNs under which the items in the shipment are classified, as well as a statement that the shipment is, will be, or was made pursuant to Authorization VEU. Notification must be made within seven calendar days of the export, reexport or transfer (in-country) to the VEU. Exporters, reexporters and VEUs are required to maintain the notifications they receive in accordance with their recordkeeping requirements.

(h) *Termination of Conditions on VEU Authorizations.* VEUs that are subject to item-specific conditions and have received items subject to such conditions under Authorization VEU are no longer bound by the conditions associated with the items if the items no longer require a license for export or reexport to the PRC or India, as applicable, or become eligible for shipment under a license exception to the destination. Termination of VEU conditions does not relieve a validated end-user of its responsibility for violations that occurred prior to the availability of a license exception or prior to the removal of license requirements.

(i) *Records.* Records of items that were shipped under Authorization VEU prior to the removal of a license requirement or the availability of a license exception remain subject to the review requirements of paragraph (f)(2) of this section on and after the date that the license requirement was removed or the license exception became applicable.

Dated: April 10, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–9237 Filed 4–16–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 46

[REG–136008–11]

RIN 1545–BK59

Fees on Health Insurance Policies and Self-Insured Plans for the Patient-Centered Outcomes Research Trust Fund

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that implement and provide guidance on the fees imposed by the Patient Protection and Affordable Care Act on issuers of certain health insurance policies and plan sponsors of certain self-insured health plans to fund the Patient-Centered Outcomes Research Trust Fund. These proposed regulations affect the issuers and plan sponsors that are directed to pay those fees. This document also contains a request for comments and provides notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by July 16, 2012. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Wednesday, August 8, 2012, at 10 a.m., must be received by July 30, 2012.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–136008–11), Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–136008–11), Courier's Desk Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the IRS Internet site via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–136008–11). The public hearing will be held in the IRS Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rebecca L. Baxter at (202) 622–3970 (regarding health insurance policies) or R. Lisa Mojiri-Azad at (202) 622–6080 (regarding self-insured health arrangements); concerning the submission of comments or the public hearing, Oluwafunmilayo (Funmi)

Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 16, 2012. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in § 46.4375–1(c)(2)(v) (use of National Association of Insurance Commissioners (NAIC) Supplemental Health Care Exhibit to calculate the fee under section 4375); § 46.4375–1(c)(2)(vi) (use of certain state forms to calculate the fee under section 4375); § 46.4376–1(b)(2)(G) (identification or designation of a plan sponsor under the governing plan document for certain applicable self-insured health plans); and § 46.4376–1(c)(2)(v) (use of the Form 5500, ''Annual Return/Report of Employee Benefit Plan,'' to calculate the fee under section 4376).

The collections of information under § 46.4375–1(c)(2)(v), § 46.4375–1(c)(2)(vi), and § 46.4376–1(c)(2)(v) are intended to lower the burden on issuers and plan sponsors of calculating the average number of lives covered for the applicable policy year or plan year. The burden for the collection of information contained in these provisions will be reflected in the burden on the Form 720 ''Quarterly Federal Excise Tax Return'' after it is revised to include the reporting and payment of the fee imposed by sections 4375 and 4376.

The collection of information contained in § 46.4376–1(b)(2)(G) is necessary to provide certain entities that establish or maintain an applicable self-insured health plan the flexibility to designate the person that will be responsible for reporting and paying the fee imposed by section 4376. The likely respondents are employers, employee organizations, or persons that establish or maintain an applicable self-insured health plan and are entitled to make an election under § 46.4376–1(b)(2)(G).

Estimated number of respondents is 10,000.

Estimated average annual burden per respondent is 5 minutes.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 40 (Excise Tax Procedural Regulations) and 26 CFR part 46 (relating to excise taxes imposed on policies issued by foreign insurers and obligations not in registered form) to implement the requirements under sections 4375 through 4377 of the Internal Revenue Code (Code). Sections 4375 and 4376 of the Code impose fees on issuers of specified health insurance policies and plan sponsors of applicable self-insured health plans, and section 4377 contains special rules that apply to these issuers and plan sponsors with respect to these fees. Sections 4375, 4376, and 4377 were added to the Code by section 6301 of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148 (124 Stat. 119 (2010)).

The Affordable Care Act includes provisions that promote research to evaluate and compare health outcomes and the clinical effectiveness, risks, and benefits of medical treatments, services, procedures, drugs, and other strategies or items that treat, manage, diagnose, or prevent illness or injury. One such provision relates to the establishment of the private, nonprofit corporation, the Patient-Centered Outcomes Research Institute (the ''Institute''). The Institute will assist, through research, patients, clinicians, purchasers, and policy-makers in making informed health decisions by advancing the quality and relevance of evidence-based medicine through the synthesis and dissemination of comparative clinical effectiveness research findings. The statute specifically prohibits the Secretary of Health and Human Services (HHS) from using the evidence or findings of the research conducted in determining coverage, reimbursement, or incentive programs unless it is through an iterative and transparent process which includes public comment and considers the effect on subpopulations. Nothing under this provision allows the Secretary of HHS to deny coverage of items or services solely on the basis of comparative clinical effectiveness research. The statute provides that the Institute will not develop a dollars-per-quality-life-year estimate as a threshold to establish effective or recommended care. Section 6301 of the Affordable Care Act amended the Code by adding new section 9511 to establish the Patient-Centered Outcomes Research Trust Fund (the ''Trust Fund''), which is the funding source for the Institute. Section 6301 of the Affordable Care Act also added new Code sections 4375, 4376, and 4377 to provide a funding source for the Trust Fund that is to be financed, in part, by fees to be paid by issuers of specified health insurance policies and sponsors of applicable self-insured health plans.

Statutory Provisions

Section 4375(a) imposes a fee on an issuer of a specified health insurance policy for each policy year ending on or after October 1, 2012, and before October 1, 2019. Under section 4375(a), the fee is two dollars (one dollar in the case of policy years ending before October 1, 2013) multiplied by the average number of lives covered under the policy. Under section 4375(d), for policy years ending on or after October 1, 2014, the fee is increased based on increases in the projected per capita amount of National Health Expenditures. Section 4375(b) provides that the fee imposed by section 4375(a) shall be paid by the issuer of the policy.

Section 4375(c) defines *specified health insurance policy* as any accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States. Section 4375(c)(2) excludes from a specified health insurance policy any insurance if

substantially all of its coverage is of excepted benefits described in section 9832(c). Section 4375(c)(3) provides that a specified health insurance policy includes any prepaid health coverage arrangement described in section 4375(c)(3)(B). An arrangement is described in section 4375(c)(3)(B) if, under the arrangement, fixed payments or premiums are received as consideration for a person's agreement to provide or arrange for the provision of accident or health coverage to residents of the United States, regardless of how the coverage is provided or arranged to be provided.

Section 4376 imposes a fee on a plan sponsor of an applicable self-insured health plan for each plan year ending on or after October 1, 2012, and before October 1, 2019. Under section 4376(a), the fee is two dollars (one dollar for plan years ending before October 1, 2013) multiplied by the average number of lives covered under the plan for the plan year. Under section 4376(d), for plan years ending on or after October 1, 2014, the fee is increased based on increases in the projected per capita amount of National Health Expenditures. Section 4376(b)(1) provides that the fee imposed by section 4376(a) shall be paid by the plan sponsor.

Section 4376(b)(2) defines *plan sponsor* as the employer in the case of a plan established or maintained by a single employer, or the employee organization in the case of a plan established or maintained by an employee organization. Section 4376(b)(2) also provides that, in the case of (1) a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, (2) a multiple employer welfare arrangement, or (3) a voluntary employees' beneficiary association described in section 501(c)(9), the plan sponsor is the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan. Section 4376(b)(2) further provides that in the case of a plan established or maintained by a rural electric cooperative (as defined in section 3(40)(B)(iv) of the Employee Retirement Income Security Act of 1974 (ERISA)) or rural telephone cooperative association (as defined in section 3(40)(B)(v) of ERISA), the plan sponsor is the cooperative or association that established or maintained the plan.

Section 4376(c) defines *applicable self-insured health plan* as any plan for providing accident or health coverage if any portion of the coverage is provided other than through an insurance policy, and the plan is established or maintained: (1) By one or more employers for the benefit of their employees or former employees, (2) by one or more employee organizations for the benefit of their members or former members, (3) jointly by one or more employers and one or more employee organizations for the benefit of employees or former employees, (4) by a voluntary employees' beneficiary association described in section 501(c)(9), (5) by any organization described in section 501(c)(6), or (6) if not previously described, by a multiple employer welfare arrangement (as defined in section 3(40) of ERISA), a rural electric cooperative (as defined in section 3(40)(B)(iv) of ERISA), or a rural telephone cooperative association (as defined in section 3(40)(B)(v) of ERISA).

Section 4377 includes definitions and special rules that apply for purposes of sections 4375 and 4376. Section 4377(a)(1) defines *accident and health coverage* as any coverage that, if provided by an insurance policy, would cause the policy to be a specified health insurance policy (as defined in section 4375(c)).

Section 4377(b)(1)(B) provides that ''[n]otwithstanding any other law or rule of law, governmental entities shall not be exempt from'' the fee imposed by sections 4375 and 4376 unless the policy or plan is an exempt governmental program. Section 4377(b)(3) defines *exempt governmental program* as (1) any insurance program established under title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*) (Medicare), (2) the medical assistance program established by title XIX (42 U.S.C. 1396 *et seq.*) (Medicaid) or title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*) (Children's Health Insurance Program), (3) any program established by Federal law for providing medical care (other than through insurance policies) to individuals (or the spouses and dependents thereof) by reason of such individuals being members of the Armed Forces of the United States or veterans, and (4) any program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act, 25 U.S.C. 1603). Under these special rules, a governmental entity (including a federally recognized Indian tribal government) that is the plan sponsor of an applicable self-insured health plan that does not meet the definition of an exempt governmental program must pay the fee imposed by section 4376.

Section 4377(c) provides that the fees imposed by sections 4375 and 4376 are treated as taxes for purposes of subtitle F of the Code.

Notice 2011–35

On June 8, 2011, the IRS released Notice 2011–35 (2011–25 IRB 879), which requested comments on how the fees imposed under sections 4375 and 4376 should be calculated and paid, including possible rules and safe harbors. The Treasury Department and the IRS received numerous comments in response to Notice 2011–35 and have considered all comments in drafting these proposed regulations. The relevant portions of Notice 2011–35 and comments are discussed in more detail in this preamble. See § 601.601(d)(2).

Explanation of Provisions

Specified Health Insurance Policies Subject to the Fee Under Section 4375

The fee under section 4375 is imposed on the issuer of a specified health insurance policy. Under the proposed regulations, the fee must be calculated using the applicable dollar amount in effect for the policy year (for example, $1 for policy years ending on or after October 1, 2012, and before October 1, 2013) and one of the permitted methods for determining the average number of lives covered under the policy during the policy year.

The term *specified health insurance policy* includes only accident and health insurance policies that are issued with respect to an individual residing in the United States. The proposed regulations clarify that for purposes of this fee, ''an individual residing in the United States'' means an individual who has a place of abode in the United States. The United States, for this purpose, includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands, and any other possession of the United States.

Commentators requested a bright-line rule for determining whether an individual covered by a policy is residing in the United States. Many commentators suggested that issuers should be able to rely on the address on file for the primary insured to determine whether individuals covered by the policy are residing in the United States. The Treasury Department and the IRS recognize that the address on file for the primary insured may be the only information the insurer has with respect to the residence of the individuals covered under the policy, and also that the address on file is likely the place of abode for most, if not all, of the covered individuals. Accordingly, the proposed

regulations provide that if the address on file with the issuer or plan sponsor for the primary insured is outside of the United States, the issuer or plan sponsor may treat the primary insured and the primary insured's spouse, dependents, or other beneficiaries covered under the policy as having the same place of abode and not residing in the United States. For this purpose, the term ''primary insured'' refers to the individual eligible for coverage other than due to his or her status as a spouse, dependent, or other beneficiary of another insured individual (for example, in the case of a group health plan for employees, the individual eligible for coverage due to his or her status as an employee).

Several commentators also suggested that expatriate policies not be considered specified health insurance policies for purposes of the fee because the policies are issued principally to cover employees who do not reside in the United States. Commentators argued that expatriate policies are predominantly group health insurance policies sold to employers for a unique subset of their employees, the substantial majority of whom are living outside the United States while working for the employer. According to these commentators, only a small minority of the individuals covered under these expatriate policies may be foreign nationals working for the employer in the United States. For these reasons, the proposed regulations provide that the term ''specified health insurance policy'' does not include any group policy issued to an employer if the facts and circumstances show that the group policy was designed and issued specifically to cover primarily employees who are working and residing outside of the United States.

Commentators requested that the regulations provide that stop loss and indemnity reinsurance policies not be considered specified health insurance policies. Commentators argued that stop loss and indemnity reinsurance policies are not providing coverage for lives covered; rather, these types of policies are intended to limit the original obligor's financial exposure. Section 4375 imposes a fee based on the average number of lives covered. Because stop loss and indemnity reinsurance policies generally do not provide coverage based upon the number of lives covered, the proposed regulations provide that for purposes of section 4375, these policies are not specified health insurance policies subject to the fee under section 4375. No inference is intended as to whether stop loss or indemnity reinsurance policies may constitute health insurance policies for other purposes.

Commentators raised questions about the description of prepaid health coverage arrangements in section 4375(c)(3)(B) and requested that the regulations clarify which types of arrangements are covered by that section. One commentator suggested that the language in section 4375(c)(3)(B) is intended to describe health maintenance organizations and similar arrangements, noting that the definition of ''health insurance,'' which was added to ERISA, the Public Health Service Act, and the Code by the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191 (110 Stat. 1936 (1996)), was specifically drafted to include health maintenance organizations and similar arrangements. The Treasury Department and the IRS agree that the language in section 4375(c)(3)(B) describes health maintenance organizations and similar organizations; therefore, the proposed regulations clarify that the description in section 4375(c)(3)(B) covers any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract.

Self-insured Health Plans and Plan Sponsors Subject to the Fee Under Section 4376

The fee under section 4376 is imposed on the plan sponsor of an applicable self-insured health plan. Under the statute and these proposed regulations, the fee must be calculated using the applicable dollar amount in effect for the plan year (for example, $1 for plan years ending on or after October 1, 2012, and before October 1, 2013) and one of the permitted methods for determining the average number of lives covered under the plan during the plan year.

These proposed regulations provide that an applicable self-insured health plan is a plan that is established or maintained by a plan sponsor for the benefit of employees, former employees, members, former members, or other eligible individuals to provide accident and health coverage (within the meaning of § 46.4377–1(a)(1) of these proposed regulations), any portion of which is provided other than through an insurance policy and that meets certain other conditions. The proposed regulations provide that an applicable self-insured health plan does not include an exempt governmental program (as defined in section 4377(c)(3)) but does include a plan that is established or maintained solely for the benefit of former employees (commonly referred to as a retiree-only plan).[1] A self-insured health plan that does not provide coverage described in section 4376(c) is not an applicable self-insured health plan. For example, a self-insured group health plan of a Federally recognized Indian tribal government that provides coverage only to tribal members that are not employees of the Indian tribal government would not be an applicable self-insured health plan, unless it otherwise falls within one of the statutory definitions of an applicable self-insured health plan (for example, the plan is established or maintained by a section 501(c)(6) organization).

Notice 2011–35 (2011–25 IRB 879) invited comments on the type or types of health flexible spending arrangements (as described in section 106(c)(2)) (health FSAs) and health reimbursement arrangements (as described in Notice 2002–45 (2002–2 CB 93)) (HRAs) that would be excluded from the definition of an applicable self-insured health plan because they provide the kind of coverage that, if provided by an insurance policy, would not cause the policy to be treated as a specified health insurance policy, as defined in section 4375(c). Health FSAs and HRAs are both self-insured health plans.[2] See § 601.601(d)(2).

Commentators generally requested that all health FSAs and HRAs be excluded from the definition of applicable self-insured health plan under section 4376. Commentators also suggested that because the majority of health FSAs or HRAs are provided in connection with a major medical plan, they should be excluded from the fee imposed by section 4376 to avoid the fee from being imposed twice with respect to the same individual. Some of the commentators also observed that there would be challenges arising from the possibility that an employer may lack information on the number of dependents whose medical expenses are

[1] Sections 4375 and 4376 may apply to a retiree-only plan because, although section 9832 excludes group health plans that have less than two participants who are current employees (such as retiree-only plans) from the requirements of chapter 100 (which includes a number of requirements added by the Affordable Care Act), this exclusion does not apply to sections 4375 and 4376 because these sections are in chapter 34. In addition, section 4376(c)(2)(A) indicates explicitly that an applicable self-insured health plan includes a plan established or maintained by one or more employers for the benefit of their employees or former employees.

[2] Archer Medical Savings Accounts (Archer MSAs) under section 220(d) and Health Savings Accounts (HSAs) under section 223(d) are tax-favored trusts for the purpose of paying the qualified medical expenses of the account beneficiary. Archer MSAs and HSAs are generally neither health insurance policies nor self-insured health plans and thus are not subject to the taxes under sections 4375 and 4376.

eligible for reimbursement from an employee's health FSA or HRA.

Some commentators requested that if HRAs were not excluded from the definition of applicable self-insured health plan, the guidance limit the fee under section 4376 to HRAs that are not offered in connection with a major medical plan or permit treatment of an HRA that is offered in connection with a major medical plan as a single applicable self-insured health plan to avoid the fee applying twice with respect to individuals covered by a major medical plan and a related HRA.

The proposed regulations do not exclude all health FSAs and HRAs from the definition of an applicable self-insured health plan under section 4376. In response to comments, however, these proposed regulations provide that multiple self-insured arrangements established and maintained by the same plan sponsor and with the same plan year are subject to a single fee. Accordingly, an HRA is not subject to a separate fee under section 4376 if the HRA is integrated with another applicable self-insured health plan that provides major medical coverage, provided that the HRA and the other plan are established or maintained by the same plan sponsor. However, section 4375 imposes a separate fee on the issuer of a specified health insurance policy. Consistent with the statutory structure which separates the fee with respect to health insurance policies from the fee with respect to self-insured plans, the proposed regulations provide that an HRA that is integrated with an insured group health plan is treated as an ''applicable self-insured health plan'' the plan sponsor of which is subject to the fee under section 4376, while the issuer of the group insurance policy for the insured group health plan is subject to the fee under section 4375, even though the HRA and the insured group health plan are maintained by the same plan sponsor.

These proposed regulations reflect the special rule in section 4375(c)(2), which is carried over to self-insured arrangements through the definition of ''accident and health coverage'' in section 4377(a)(1), that a specified health insurance policy does not include any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c). The proposed regulations provide that a health FSA that satisfies the requirements of an excepted benefit under section 9832(c) is excluded from the definition of an ''applicable self-insured health plan'' and therefore is not subject to the fee imposed by section 4376. (See § 54.9831–1(c)(3)(v), relating to additional rules on health FSAs that are excepted benefits.) A health FSA that does not satisfy the requirements to be treated as an excepted benefit is an applicable self-insured health plan subject to the fee imposed by section 4376 (and, for purposes of the rules in the preceding paragraph, is treated the same as an integrated HRA).

In addition, to address the concerns raised about the availability of information on the lives covered under an HRA or health FSA, the proposed regulations contain a special rule permitting the plan sponsor to assume one covered life for each employee with an HRA and for each employee with a health FSA that is not an excepted benefit.

Commentators also requested that an employee assistance program (EAP) or wellness arrangement be exempt from the fee. Commentators argued that generally, under an EAP or wellness arrangement, benefits for medical care are secondary or incidental to non-medical benefits. In response, these proposed regulations exclude from the definition of applicable self-insured health plan an EAP, disease management program, or wellness program, if the program does not provide significant benefits in the nature of medical care or treatment.

For each type of applicable self-insured health plan identified in section 4376(c), the plan sponsor is the person responsible for the payment of the fee. Section 4376(b)(2) provides that in the case of a plan established or maintained by a single employer, the plan sponsor is the employer, and in the case of a plan established or maintained by a single employee organization, the plan sponsor is the employee organization. Section 4376 does not contain rules that would treat related entities as a single entity. Accordingly, for example, under these proposed regulations, a plan that is maintained by multiple related employers is not a plan that is established or maintained by a single employer, but, for section 4376 purposes, is considered a plan that is established or maintained by two or more employers.

In the case of a plan maintained by two or more employers, the proposed regulations provide that the plan sponsor is the person identified as the plan sponsor by the terms of the document under which the plan is operated, or the employer designated as the plan sponsor for purposes of section 4376 by the terms of the document under which the plan is operated (provided that such designation is made, and that employer has consented to the designation, by no later than the due date of the return under section 4376 for that plan year is required to be filed, after which date such designation for that plan year may not be changed or revoked, and provided further that an employer may be designated as the plan sponsor only if that employer is one of the employers maintaining the plan). In the absence of the identification or designation of a plan sponsor by the terms of the document under which the plan is operated, the proposed regulations provide that the plan sponsor is each employer that maintains the plan (with respect to employees of that employer). Because the plan sponsor may be designated on or before the due date for filing the Form 720, ''Quarterly Federal Excise Tax Return,'' for the plan year, and under these proposed regulations the first potential due date for filing the Form 720 is July 31, 2013, this rule provides related employers that provide coverage for their employees under a single plan ample time to designate a plan sponsor if the employers wish to consolidate the filing and the payment of the fee under section 4376. In the absence of designation of a plan sponsor in the governing plan document, the proposed regulations provide that the plan sponsor is each employer that maintains the plan (with respect to employees of that employer), and therefore each employer would be required to file its own Form 720, reflecting the section 4376 fee applicable to that employer as a plan sponsor with respect to its employees.

As discussed in Notice 2011–35 and earlier in the section of this preamble entitled ''Statutory Provisions,'' section 4377(b) provides that the fee imposed by section 4376 applies to a governmental entity that establishes or maintains an applicable self-insured health plan (other than a plan that qualifies as an exempt governmental program) for its employees. These proposed regulations provide that a governmental entity that establishes or maintains an applicable self-insured health plan for its current or former employees is the plan sponsor for purposes of the fee imposed by section 4376. Thus, these proposed regulations require that a governmental entity (including a Federally recognized Indian tribal government) that establishes or maintains an applicable self-insured health plan (other than a plan that qualifies as an exempt governmental program) must calculate, report, and pay the fee under section 4376 in accordance with the guidance in these proposed regulations.

Several commentators requested that the guidance clarify that, in the case of

an applicable self-insured health plan that is established or maintained by a board of trustees, plan assets (for example, amounts held in a trust) or the employer contributions to the plan could be used to pay the fee under section 4376. Because the use of plan assets to pay the fee under section 4376 may have implications under various state and Federal laws (including, for example, ERISA's fiduciary provisions), the question of what the permissible sources of funds are for paying the fee under section 4376 is an issue that is outside the scope of these proposed regulations. The Treasury Department and the IRS have consulted the Department of Labor concerning comments on the appropriate sources to pay the fee under section 4376. The Department of Labor has advised the Treasury Department and the IRS that it is considering permissible funding sources for these fee payments by plan sponsors that are subject to ERISA's fiduciary provisions.

Calculation of the Fee Under Section 4375

The fee imposed on an issuer of a specified health insurance policy under section 4375 is based on the average number of lives covered under the policy. Notice 2011–35 invited comments on reasonable methods an issuer may use to determine the average number of lives covered under a policy. Notice 2011–35 also invited comments on whether guidance should provide a safe harbor for issuers that are required to file the National Association of Insurance Commissioners (NAIC) Supplemental Health Care Exhibit (Exhibit). In particular, the Treasury Department and the IRS outlined a potential safe harbor based on the number of lives reported on the most recently filed Exhibit or based on the average of the covered lives reported on the most recently filed Exhibit and the immediately preceding Exhibit.

Commentators generally favored a safe harbor that allows issuers to calculate the average number of lives covered under the policy based on data reported on the Exhibit but expressed concerns with exclusive reliance upon covered lives data on the Exhibit. According to the instructions to the Exhibit, the term ''covered lives'' means the total number of lives insured, including dependents, at any time during the reporting period, which means the Exhibit captures all lives covered without regard to how long the coverage lasted. Several commentators recommended that the regulations allow issuers to use member months data reported in the Exhibit. The Exhibit defines the term ''member months,'' as the sum of the number of lives covered on a single day in every month. Commentators argued that dividing the member months data by 12 (the number of months in a reporting period) is a more accurate measure of the average number of lives covered because it better reflects that some individuals may only be insured for part of the year.

Commentators noted that some entities are not required to file the Exhibit, but must provide comparable forms to their applicable state regulators. Commentators recommended that the proposed regulations permit issuers to use information included in any other report filed with a state government.

Some commentators suggested that the regulations allow issuers to determine the average number of lives covered by counting the actual number of lives covered during the policy year. Other commentators requested that the regulations allow the use of any reasonable formula or other method to determine the average number of lives covered, including a formula or method that historically has been used by the issuer for other business purposes.

The proposed regulations provide issuers the choice of using any of four alternative methods to determine the average number of lives covered under policies that it issues for purposes of the fee imposed by section 4375. First, an issuer may determine the average number of lives covered under a policy for a policy year by calculating the sum of lives covered for each day of the policy year and dividing that sum by the number of days in the policy year (the actual count method). Second, an issuer may determine the average number of lives covered under a policy for a policy year by adding the total number of lives covered on one date in each quarter of the policy year, or an equal number of dates for each quarter, and dividing the total by the number of dates on which a count was made (the snapshot method). Third, as an alternative to determining the average number of lives covered under each individual policy for its respective policy year, an issuer may determine the average number of lives covered under all policies in effect for a calendar year based on the ''member months'' reported on the Exhibit divided by 12 (the member months method). Fourth, an issuer that is not required to file the Exhibit may determine the average number of lives covered under all of its policies in effect for a calendar year using data in any form that is equivalent to the Exhibit that is filed with the state of domicile if the state form reports lives covered in the same manner as member months is reported on the Exhibit (the state form method). For this purpose, an equivalent form includes only a form that reports all the lives covered under the policy (including, for example, spouses, dependents, and other beneficiaries, as applicable).

The proposed regulations direct an issuer to apply a single method in determining the average number of lives covered under the policy for the year. In addition, issuers must use the same method of counting lives for all policies reported on a single return. Issuers using the actual count or snapshot method may change to the snapshot or actual count method from one policy year to the next. For example, an issuer with a policy that has a policy year that ends on June 30, Policy A, may determine lives covered under Policy A for July 1, 2013 to June 30, 2014, using the actual count method if the issuer uses the actual count method for all policies for which a liability will be reported on the Form 720, ''Quarterly Federal Excise Tax Return,'' due by July 31, 2015 (the due date for the return that will include the July 2013 to June 2014 policy year for Policy A, as discussed in the section of this preamble entitled ''Application of Excise Tax Procedural Rules (Filing of Returns and Payment of Fees'')). The issuer may change its method for determining lives covered under Policy A to the snapshot method for the July 1, 2014, to June 30, 2015 policy year, provided that the snapshot method is used for all policies for which a liability will be reported on the return due by July 31, 2016 (the due date for the return that will include the July 2014 to June 2015 policy year for Policy A).

While the actual count and snapshot methods count lives covered on a policy-by-policy basis for each policy having a policy year that ends in the reporting period (which is based on the calendar year), the member months and state form methods count all lives covered during the calendar year for all policies in effect during the calendar year irrespective of when actual policy years end. For example, for a policy with a policy year that ends on June 30, member months will include lives covered under that policy from January 1 to December 31 and aggregate those lives covered with all other lives covered for the calendar year under all policies in effect during the calendar year. To convert the lives covered from the member months to the total lives covered under a particular policy for a policy year is administratively burdensome. Accordingly, the proposed regulations provide that an issuer using

the member months or state form method must use that method for all policies for all years for which the fee applies. The Treasury Department and the IRS solicit comments on whether there should be an exception to this rule for issuers of calendar-year only policies who want to switch from the member months or state form method to the actual count or snapshot method and, if so, how to address the transition in methods for the 2012 and 2019 calendar years.

Commentators noted that for 2012 and 2019 a partial year adjustment will be needed because the member months data, which uses the calendar year for all policies, will include in the member months for 2012 and 2019 lives covered under policies with a policy year that ends before October 1, 2012, or after September 30, 2019, which are policies to which the fee under section 4375 does not apply. The Treasury Department and the IRS also understand that the data reported on state forms is generally also based on the calendar year. To adjust for 2012 and 2019, the proposed regulations adopt a pro rata approach for calculating the average number of lives covered using the member months method or the state form method for 2012 and 2019. For example, the member months number for 2012 is divided by 12 and the resulting number is multiplied by one-quarter to arrive at the average number of lives covered for October through December 2012. The proposed regulations further treat the amount calculated under this pro rata approach as the average number of lives covered for policies with policy years that end on or after October 1, 2012, and before January 1, 2013. Similar rules are provided for 2019.

The Treasury Department and the IRS understand that these proposed regulations are being issued after the beginning of some policy years to which the fee under section 4375 will apply. Because issuers that do not use the member months method or state form method may not have started counting lives covered for policy years that end on or after October 1, 2012, but that began before May 14, 2012, issuers using the actual count method may begin counting lives covered under a policy as of May 14, 2012 rather than the first day of the policy year, and divide by the appropriate number of days remaining in the policy year. Similarly, for policy years that end on or after October 1, 2012, but that began before May 14, 2012, issuers using the snapshot method may use counts from quarters beginning on or after May 14, 2012 to determine the average number of lives covered under the policy. The Treasury Department and the IRS intend for these rules to facilitate compliance for the initial policy years covered by section 4375. Comments are requested as to whether any additional transition rules under section 4375 are needed for this purpose.

Calculation of the Fee Under Section 4376

The fee imposed on a plan sponsor of an applicable self-insured health plan under section 4376 is based on the average number of lives covered under the plan. Notice 2011–35 invited comments on reasonable methods that could reduce administrative burdens on plan sponsors that must compute the average number of lives covered under an applicable self-insured health plan. Notice 2011–35 also invited comments on safe harbors that would permit a plan sponsor to determine the average number of covered lives under the plan using a formula based on the number of participants and one or more additional factors that account for the number of dependents without requiring that every actual dependent covered under the plan be counted.

Commentators generally favored using reasonable simplifying methods and safe harbors to determine the average number of lives covered under the plan. Some commentators suggested that the guidance permit the use of snapshot data to determine the number of lives taken into account for calculating the average number of lives covered during the plan year. Commentators also suggested that plan sponsors be permitted to determine the average number of lives covered during the year based on information reported on the plan's Form 5500, ''Annual Return/Report of Employee Benefit Plan.''

Commentators generally recognized that a method that is based on Form 5500 reporting will have limited application because the requirement to file a Form 5500 does not apply to all plan sponsors that are subject to the fee under section 4376. These commentators also noted that the Form 5500 does not include information on the number of lives (participants and dependents) covered under the plan during the plan year, but rather includes information only on the number of participants on the first day and last day of the plan year. Accordingly, the information reported on the Form 5500 would need to be converted to a number that accurately represents the average number of covered lives under the plan for the plan year.

To make it easier for plan sponsors to determine the average number of lives covered under the plan for the plan year, these proposed regulations provide plan sponsors a choice to use any of three alternative methods. First, a plan sponsor may determine the average number of lives covered under the plan for the plan year by calculating the sum of the lives covered for each day of the plan year and dividing that sum by the number of days in the plan year (the actual count method). Second, a plan sponsor may determine the average number of lives covered under the plan for the plan year by adding the totals of lives covered on one date in each quarter, or an equal number of dates for each quarter, and dividing the total by the number of dates on which a count was made (the snapshot method). For this purpose, the number of lives covered on a date may be determined as equal to either the sum of the actual number of lives covered on the dates (the snapshot count method) or the sum of (1) the number of participants with self-only coverage on that date, plus (2) the product of the number of participants with coverage other than self-only coverage on the date and 2.35 (the snapshot factor method).[3] The Treasury Department and the IRS request comments on additional sources of data that could be used to calculate a more accurate conversion factor.

Third, a plan sponsor may determine the average number of lives covered under the plan for the plan year based on a formula that includes the number of participants actually reported on the Form 5500 for the applicable self-insured health plan for the plan year (the Form 5500 method). For a plan providing only self-only coverage, under the Form 5500 method the plan sponsor may treat the average number of covered lives under the plan for a plan year as the sum of the total participants at the beginning and the end of the plan year, in each case as reported on the Form 5500, divided by two.

For plans providing coverage that is not limited to the self-only coverage, the Form 5500 does not identify whether the coverage is self-only or family (or some other non-self-only coverage). Therefore, the number of participants reported on the Form 5500 generally is converted to covered lives by multiplying the number of participants on each date by a factor of 2.0. (This

[3] The 2.35 dependency factor reflects that all participants with coverage other than self-only have coverage for themselves and some number of dependents. The Treasury Department and the IRS developed the factor, and other similar factors used in the regulations, in consultation with Treasury Department economists and in consultation with plan sponsors regarding the procedures they currently use for estimating the number of covered individuals.

factor is lower than the 2.35 factor used in the snapshot factor method because this factor takes into account participants with self-only coverage that covers one life, as well as participants with other coverage that covers two or more lives.) Accordingly, under the Form 5500 method for plans that provide coverage not limited to self-only coverage, a plan sponsor may simply add the number of participants reported for the beginning of the plan year to the number reported for the end of the plan year to determine the average number of covered lives for the plan year. The Treasury Department and the IRS request comments on additional sources of data that could be used to calculate a more accurate conversion factor.

The proposed regulations direct a plan sponsor to apply a single method in determining the average number of lives covered under the plan for the entire plan year. However, a plan sponsor is not required to use the same method from one plan year to the next.

The Treasury Department and the IRS understand that these proposed regulations are being issued after the beginning of some plan years to which the fee under section 4376 will apply. Therefore, these proposed regulations include a special rule for the fee under section 4376 applicable for a plan year that ends on or after October 1, 2012, and began before July 11, 2012. Because self-insured plans generally are not required to complete the Exhibit or determine the number of covered lives for other regulatory purposes, under this special rule, a plan sponsor may use any reasonable method to determine the average number of lives covered under the plan for purposes of calculating the fee under section 4376 for those plan years. For more information about the return filing requirements and payment of the fees, see the section in this preamble entitled ''Application of Excise Tax Procedural Rules (Filing of Returns and Payment of Fees).''

Application of Subtitle F

In accordance with section 4377(c), references in subtitle F (section 6001–7874) to ''taxes imposed by this title,'' ''internal revenue tax,'' and similar references apply to the fees imposed by sections 4375 and 4376. For example, the fees imposed by sections 4375 and 4376 are assessed pursuant to section 6201, collected pursuant to sections 6301, 6321, and 6331, enforced pursuant to section 7602, subject to examination and summons pursuant to section 7602, and subject to confidentiality rules pursuant to section 6103, in the same manner as other taxes imposed by the Code.

Sections 4375 and 4376 are in chapter 34 of the Code (Taxes on Certain Insurance Policies). The deficiency procedures of sections 6211–6216 apply only to income, estate, and gift taxes imposed by subtitle A (Income Taxes) and B (Estate and Gift Taxes) and the excise taxes imposed by chapters 41–44. Because sections 4375 and 4376 are in chapter 34, the deficiency procedures do not apply to the fee. Thus, the IRS may assess and collect the fees using the procedures in subtitle F without regard to the restrictions on assessment in section 6213 (relating to petitions to the Tax Court).

Application of Excise Tax Procedural Rules (Filing of Returns and Payment of Fees)

The Excise Tax Procedural Regulations in 26 CFR part 40 contain rules for depositing, paying, and return filing for a number of excise taxes, including the excise taxes in chapter 34.

Under existing rules for chapter 34 excise taxes, taxpayers pay and report these taxes quarterly on Form 720, ''Quarterly Federal Excise Tax Return,'' by the last day of the first calendar month following the calendar quarter for which it is filed. The proposed regulations amend this rule so that issuers and plan sponsors will report and pay the section 4375 and 4376 fees only once a year on Form 720, which will be due by July 31 of each year. A person that files a Form 720 only to report liability imposed by section 4375 or 4376 is not required to file a Form 720 at other times during the year. A return will generally cover policy years (section 4375) and plan years (section 4376) that end during the preceding calendar year, or in the case of an issuer that determines the average number of lives covered for purposes of section 4375 using the member months method or the state form method, the return is for all policies in effect during the previous calendar year. The instructions for Form 720 inform filers how and when to file and pay. These instructions require that the filer (the issuer or plan sponsor, as applicable) have an Employer Identification Number (EIN) to use in filing the Form 720.

Most excise taxes reported on Form 720 are required to be deposited semimonthly. However, these proposed regulations do not require semimonthly deposits of the fee imposed by section 4375 or 4376; rather, full payment of the fee is due annually by the July 31 due date of Form 720.

Any claim for a refund of the section 4375 or 4376 fees must be filed on Form 8849, ''Claim for Refund of Excise Taxes,'' or Form 720X, ''Amended Quarterly Federal Excise Tax Return,'' in accordance with the instructions for those forms.

These proposed regulations do not impose any specific recordkeeping requirements for calculating the fees under sections 4375 and 4376. However, see the instructions for Form 720 for general information on recordkeeping requirements.

The IRS will revise the current Form 720 to reflect these fees.

Electronic Filing of Returns

Form 720 may be filed electronically. For more information on e-file, see *www.irs.gov/efile*. Although electronic filing of the Form 720, ''Quarterly Federal Excise Tax Return,'' is not required, the IRS encourages taxpayers to file the Form 720 electronically. Electronic filing of Form 720 is quick and easy, and it will allow the IRS to provide expedited and improved service and reliability to taxpayers while reducing processing time and errors. Forms 720 can be submitted on-line. A taxpayer wishing to file the Form 720 electronically must submit it through an approved transmitter software developer. The IRS has posted on its Web site contact information for all approved Form 720 e-file transmitters at *http://www.irs.gov/efile/lists/0,,id=176152,00.html*. To electronically file the Form 720, taxpayers will incur the cost of the provider's required service fee for online submission.

Third-Party Reporting and Payments

Notice 2011–35 requested comments on the ability of third parties to act on behalf of a plan sponsor in complying with the requirements of the fee under section 4376. A number of commentators suggested that guidance should permit third parties to act on behalf of a plan sponsor in reporting and paying the fee. Most of these commentators requested that the Treasury Department and the IRS establish a special reporting and filing regime for third parties that is different than the regime for plan sponsors. Although the IRS has established limited third-party reporting and payment regimes in certain instances (see for example, Rev. Proc. 2007–38 (2007–1 CB 1442)) the IRS does not intend to adopt such a program for the fee under section 4375 or the fee under section 4376 because the benefits of such a program would be outweighed by the administrative burdens, particularly given the limited period over which the fee will apply. See § 601.601(d)(2).

Proposed Effective Date

These regulations are proposed to apply to policy and plan years ending on or after October 1, 2012, and before October 1, 2019. Issuers and plan sponsors may rely on these proposed regulations for guidance pending the issuance of final regulations. Final regulations will be effective as of the date these proposed regulations are published in the **Federal Register**. If and to the extent future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that small businesses generally do not have self-insured health plans and that these regulations will therefore primarily affect large corporations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. The Treasury Department and the IRS specifically solicit comments from any party, particularly affected small entities, on the accuracy of this certification. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 8, 2012, beginning at 10 a.m. in room the auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by July 30, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Rebecca L. Baxter, Office of Associate Chief Counsel (Financial Institutions & Products), and R. Lisa Mojiri-Azad, Office of Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 46

Excise taxes, Insurance, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 40 and 46 are proposed to be amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

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

Par. 2. Section 40.0–1 is amended as follows:

1. Paragraph (a) is amended by removing from the third sentence the language ''chapter 34 to taxes imposed on policies issued by foreign insurers'' and adding ''chapter 34 to taxes imposed on certain insurance policies'' in its place, and adding a new sentence after the third sentence to read as follows:

§ 40.0–1 Introduction.

(a) * * * References in this part to ''taxes'' also include references to the fees imposed by sections 4375 and 4376. * * *

* * * * *

Par. 3. Section 40.6011(a)–1 is amended by:

1. In paragraph (a)(2)(i), first sentence, the language ''paragraph (b) of this section'' is removed and the language ''paragraphs (b) and (c) of this section'' is added in its place.

2. Paragraph (c) is added.

The addition reads as follows:

§ 40.6011(a)–1 Returns.

* * * * *

(c) *Fees on health insurance policies and self-insured health plans*—(1) *In general.* A return that reports liability imposed by section 4375 or 4376 is a return for policies or plans with policy or plan years ending in the previous calendar year, or for issuers that determine the average number of lives covered under a policy for purposes of section 4375 using the member months method under § 46.4375–1(c)(2)(v) of this chapter or the state form method under § 46.4375–1(c)(2)(vi) of this chapter, the return is for all policies in effect during the previous calendar year. The second sentence of paragraph (a)(2)(i) of this section (relating to filing quarterly returns regardless of whether liability is incurred) does not apply to a person that files a Form 720, ''Quarterly Federal Excise Tax Return,'' only to report liability imposed by section 4375 or 4376.

(2) *Effective/applicability date.* This paragraph (c) is applicable on April 17, 2012. This paragraph (c) applies to returns that report liability imposed by section 4375 or 4376 for all policies and plans to which section 4375 or 4376 applies.

Par. 4. Section 40.6071(a)–1 is amended as follows:

1. Paragraph (c) is revised.

2. Paragraph (d) is added.

The revision and addition read as follows:

§ 40.6071(a)–1 Time for filing returns.

* * * * *

(c) *Fees on health insurance policies and self-insured health plans.* A return that reports liability for the fee imposed by section 4375 must be filed by July 31 of the calendar year immediately following the last day of the policy year. For issuers that determine the average number of lives covered under the policy for section 4375 using the member months method under § 46.4375–1(c)(2)(v) of this chapter or the state form method under § 46.4375–

1(c)(2)(vi) of this chapter, the return must be filed by July 31 of the immediately following calendar year. A return that reports liability for the fee imposed by section 4376 for a plan year must be filed by July 31 of the calendar year immediately following the last day of the plan year. Thus, for example, a return that reports liability for the fee imposed by section 4375 for the year ending on December 31, 2012, must be filed by July 31, 2013. As another example, a return that reports liability for the fee imposed by section 4376 for the plan year ending on January 31, 2013, must be filed by July 31, 2014.

(d) *Effective/applicability date.* Paragraph (c) of this section is applicable on April 17, 2012. Paragraphs (a) and (b) of this section apply to returns for calendar quarters beginning on or after October 1, 2001, and paragraph (c) of this section applies to returns that report liability imposed by section 4375 or 4376 for all policies and plans to which section 4375 or 4376 applies.

§ 40.6091–1 [Amended]

Par. 5. Section 40.6091–1(a) is amended by removing the language ''paragraph (b) of this section, quarterly returns'' and by adding the language ''paragraphs (b) and (c) of this section, returns'' in its place.

Par. 6. Section 40.6302(c)–1 is amended by revising the section heading and paragraph (e)(1)(iv) to read as follows:

§ 40.6302(c)–1 Use of Government depositaries.

* * * * *

(e) * * *

(1) * * *

(iv) Sections 4375 and 4376 (relating to fees on health insurance policies and self-insured health plans).

* * * * *

PART 46—EXCISE TAX ON CERTAIN INSURANCE POLICIES AND OBLIGATIONS NOT IN REGISTERED FORM

Par. 7. The authority citation for part 46 continues to read in part as follows:

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

Par. 8. In Part 46, the heading is revised to read as set forth above.

§ 46.0–1 [Amended]

Par. 9. In § 46.0–1, first sentence, the language ''policies issued by foreign insurers'' is removed and the language ''certain insurance policies'' is added in its place.

§ 46.0–2 [Removed]

Par. 10. Section 46.0–2 is removed.

Par. 11. In Part 46, subpart C is redesignated as subpart D and a new subpart C is added to read as follows:

Subpart C—Fees on Insured and Self-Insured Health Plans

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Subpart C—Fees on Insured and Self-Insured Health Plans

§ 46.4375–1 Fee on issuers of specified health insurance policies.

(a) *In general.* An issuer of a specified health insurance policy is liable for a fee imposed by section 4375 for policy years ending on or after October 1, 2012, and before October 1, 2019. Paragraph (b) of this section provides definitions that apply for purposes of section 4375 and this section. Paragraph (c) of this section provides rules for calculating the fee under section 4375. Paragraph (d) of this section provides the effective/applicability date. For rules relating to filing the required return and paying the fee, see §§ 40.6011(a)–1 and 40.6151(a)–1 of this chapter.

(b) *Definitions.* The following definitions apply for purposes of section 4375 and this section. See also § 46.4377–1 for additional definitions.

(1) *Specified health insurance policy*—(i) *In general.* Except as provided in paragraph (b)(1)(ii) of this section and § 46.4377–1, *specified health insurance policy* means any accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States (as defined in § 46.4377–1(a)(2)), including certain prepaid health coverage arrangements as described in paragraph (b)(2) of this section.

(ii) *Exceptions.* The term *specified health insurance policy* does not include—

(A) Any insurance policy if substantially all of its coverage is of excepted benefits described in section 9832(c);

(B) Any group policy issued to an employer where the facts and circumstances show that the group policy was designed and issued specifically to cover primarily employees who are working and residing outside of the United States (see § 46.4377–1(a)(3)); or

(C) Any stop loss or indemnity reinsurance policy.

(iii) *Stop loss policy.* For purposes of paragraph (b)(1)(ii) of this section, *stop loss policy* means an insurance policy in which—

(A) The insurer that issues the policy to a person establishing or maintaining a self-insured health plan becomes liable for all, or an agreed upon portion of, losses that person incurs in covering the applicable lives in excess of a specified amount; and

(B) The person establishing or maintaining the self-insured health plan retains its liability to, and its contractual relationship with, the applicable lives covered.

(iv) *Indemnity reinsurance policy.* For purposes of paragraph (b)(1)(ii) of this section, *indemnity reinsurance policy* means an agreement between two or more insurance companies under which—

(A) The reinsuring company agrees to accept and to indemnify the issuing company for all or part of the risk of loss under policies specified in the agreement; and

(B) The issuing company retains its liability to, and its contractual relationship with, the applicable lives covered.

(2) *Prepaid health coverage arrangement.* The term *prepaid health coverage arrangement* means an arrangement under which fixed payments or premiums are received as consideration for a person's agreement to provide or arrange for the provision of accident or health coverage to individuals residing in the United States, regardless of how such coverage is provided or arranged to be provided. For example, any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract is a specified health insurance policy.

(c) *Calculation of fee*—(1) *In general.* The amount of the fee for a policy for a policy year is equal to the product of the average number of lives covered under the policy for the policy year (determined in accordance with paragraphs (c)(2) and (c)(3) of this section) and the applicable dollar amount (determined in accordance with paragraph (c)(4) of this section). For purposes of computing the fee under this paragraph (c), in the case of an issuer that determines the average number of lives covered for all policies in effect during a calendar year using the member months method under paragraph (c)(2)(v) of this section or the state form method under paragraph (c)(2)(vi) of this section, the applicable dollar amount with respect to such issuer's policies for such calendar year is the applicable dollar amount for policy years ending on December 31 of such calendar year (determined in accordance with paragraph (c)(4) of this section), except that the applicable

dollar amount with respect to such an issuer's policies for calendar year 2019 shall be the applicable dollar amount for policy years ending on September 30, 2019. For more information, see the examples in paragraphs (c)(2)(iii)(B), (c)(2)(iv)(B), (c)(2)(v)(B), and (c)(2)(vi)(B) of this section.

(2) *Determination of the average number of lives covered under a policy*—(i) *In general.* To determine the average number of lives covered under a specified health insurance policy during a policy year, an issuer must use one of the following methods—

(A) The actual count method (described in paragraph (c)(2)(iii) of this section);

(B) The snapshot method (described in paragraph (c)(2)(iv) of this section);

(C) The member months method (described in paragraph (c)(2)(v) of this section); or

(D) The state form method (described in paragraph (c)(2)(vi) of this section).

(ii) *Consistency requirements.* An issuer must use the same method of calculating the average number of lives covered under a policy consistently for the duration of the year. In addition, for all policies for which a liability is reported on a Form 720, ''Quarterly Federal Excise Tax Return,'' for a particular year, the issuer must use the same method of computing lives covered. An issuer that determines the average number of lives covered by using the actual count method described in paragraph (c)(2)(iii) of this section or the snapshot method described in paragraph (c)(2)(iv) of this section may change its method of computing the average lives covered to the snapshot method or actual count method, provided that the issuer uses the same method for computing the average lives covered for all policies for which a liability is reported on the Form 720 for that year. For example, an issuer with a policy having a policy year that ends on June 30, Policy A, may determine the average number of lives covered under Policy A for July 1, 2013, to June 30, 2014, using the actual count method if the issuer uses the actual count method for all policies for which a liability will be reported on the Form 720 due by July 31, 2015 (the due date for return that will include the liability for the July 2013 to June 2014 policy year for Policy A). The issuer may change its method for determining the average number of lives covered under Policy A to the snapshot method for the July 1, 2014, to June 30, 2015, policy year, provided that the snapshot method is used for all policies for which a liability will be reported on the Form 720 due by July 31, 2016 (the due date for return that will include the liability for the July 2014 to June 2015 policy year for Policy A). An issuer that determines the average number of lives covered by using the member months method under paragraph (c)(2)(v) of this section or the state form method under paragraph (c)(2)(vi) of this section must use the same method for calculating lives covered for all policy years for which the fee applies.

(iii) *Actual count method*—(A) *Calculation method.* An issuer may determine the average number of lives covered under a policy for a policy year by adding the total number of lives covered for each day of the policy year and dividing that total by the number of days in the policy year.

(B) *Example.* The following example illustrates the principles of paragraphs (c)(1) and (c)(2)(iii)(A) of this section:

Example. Insurance Company A issues three policies that are in effect during 2014, Group Health Insurance Policy A, which has a policy year from December 1 to November 30, Group Health Insurance Policy B, which has a policy year from March 1 to February 28, and Group Health Insurance Policy C, which has a policy year from January 1 to December 31. To calculate the average number of lives covered for 2014, Insurance Company A must calculate the average number of lives covered for each of its three policies for the policy year that ends in 2014. Insurance Company A chooses to use the actual count method under paragraph (c)(2)(iii)(A) of this section to determine average lives covered for policies having a policy year that ends in 2014. Insurance Company A calculates the sum of lives covered under Policy A for each day of the policy year ending November 30, 2014, as 3,285,000. The average number of lives covered under Policy A for the policy year ending November 30, 2014, is 3,285,000 divided by 365, or 9,000. Insurance Company A calculates the sum of lives covered under Policy B for each day of the policy year ending February 28, 2014, as 547,500. The average number of lives covered under Policy B for the policy year ending on February 28, 2014, is 547,500 divided by 365, or 1,500. Insurance Company A calculates the sum of lives covered under Policy C for each day of the policy year ending December 31, 2014, as 4,380,000. The average number of lives covered under Policy C for the policy year ending December 31, 2014, is 4,380,000 divided by 365, or 12,000. To calculate the section 4375 fee under paragraph (c)(1) of this section for calendar year 2014, Insurance Company A must first determine the applicable dollar amount for each policy under paragraph (c)(4) of this section and multiply that amount by the average number of lives covered for that policy. Insurance Company A then adds the total fees for all three policies to determine the total fee under section 4375 that it must pay for calendar year 2014.

(iv) *Snapshot method*—(A) *Calculation method.* An issuer may determine the average number of lives covered under a policy for a policy year by adding the totals of lives covered on one date in each quarter of the policy year, or more dates if an equal number of dates is used for each quarter, and dividing that total by the number of dates on which a count was made. For this purpose, the date or dates for each quarter must be the same (for example, the first day of the quarter, the last day of the quarter, or the first day of each month).

(B) *Example.* The following example illustrates the principles of paragraphs (c)(1) and (c)(2)(iv)(A) of this section:

Example. Insurance Company B issues three policies that are in effect during 2014, Group Health Insurance Policy A, which has a policy year from December 1 to November 30, Group Health Insurance Policy B, which has a policy year from March 1 to February 28, and Group Health Insurance Policy C, which has a policy year from January 1 to December 31. To calculate the average number of lives covered for 2014, Company A must calculate the average number of lives covered for each of its three policies for the policy year that ends in 2014. Insurance Company B chooses to determine its average lives covered using the snapshot method for all policies that have a policy year that ends in 2014 and chooses to count lives covered on the first day of each quarter of the policy years. On December 1, 2013, Policy A covers 8,900 lives covered, on March 1, 2014, 9,100 lives covered, on June 1, 2014, 9,050 lives covered, and on September 1, 2014, 9,050 lives covered. Insurance Company B treats the average number of lives covered under Policy A for the policy year ending November 30, 2014, as 36,100 (8,900 + 9,100 + 9,050 + 9,050) divided by 4, or 9,025. On March 1, 2013, Policy B covers 1,500 lives covered, on June 1, 2013, 1,350 lives covered, on September 1, 2013, 1,400 lives covered, and on December 1, 2013, 1,550 lives covered. Insurance Company B treats the average number of lives covered under Policy B for the policy year ending February 28, 2014, as 5,800 (1,500 + 1,350 + 1,400 + 1,550) divided by 4, or 1,450. On January 1, 2014, Policy C covers 12,500 lives covered, on April 1, 2014, 12,250 lives covered, on July 1, 2014, 12,000 lives covered, and on October 1, 2014, 11,250 lives covered. Insurance Company B treats the average number of lives covered under Policy C for the policy year ending December 31, 2014, as 47,750 (12,500 + 12,250 + 12,000 + 11,250) divided by 4, or 12,000. To calculate the section 4375 fee under paragraph (c)(1) of this section for calendar year 2014, Insurance Company B must first determine the applicable dollar amount for each policy under paragraph (c)(4) of this section and multiply that amount by the number of average lives covered for that policy. Insurance Company B then adds the total fees for all three policies to determine the total fee under section 4375 that it must pay for calendar year 2014.

(v) *Member months method*—(A) *Calculation method.* An issuer may

determine the average number of lives covered under all policies in effect for a calendar year based on the member months (an amount that equals the sum of the totals of lives covered on pre-specified days in each month of the reporting period) reported on the National Association of Insurance Commissioners (NAIC) Supplemental Health Care Exhibit filed for that calendar year. Under this method, the average number of lives covered under the policies in effect for the calendar year equals the member months divided by 12.

(B) *Example.* The following example illustrates the principles of paragraphs (c)(1) and (c)(2)(v)(A) of this section:

Example. Insurance Company C chooses to determine the average number of lives covered for all years to which the section 4375 fee applies using the member months method of paragraph (c)(2)(v)(A) of this section. Insurance Company C reports 12,000,000 as its member months on the NAIC Supplemental Health Care Exhibit filed for calendar year 2013. Under the member months method, Insurance Company C calculates the average number of lives covered for all its specified health insurance policies in force during calendar year 2013 by dividing 12,000,000 (member months) by 12 (number of months in the reporting period), which equals 1,000,000. To determine the section 4375 fee it must pay for calendar year 2013, Insurance Company C multiplies 1,000,000 by the applicable dollar amount that is in effect at the end of the calendar year under paragraph (c)(4) of this section.

(vi) *State form method*—(A) *Calculation method.* An issuer that is not required to file NAIC annual financial statements may determine the number of lives covered under all policies in effect for the calendar year using a form that is filed with the issuer's state of domicile and a method similar to that described in paragraph (c)(2)(v) of this section, if the form reports the number of lives covered in the same manner as member months are reported on the NAIC Supplemental Health Care Exhibit.

(B) *Example.* The following example illustrates the principles of paragraphs (c)(1) and (c)(2)(vi)(A) of this section:

Example. Insurance Company D is not required to file the NAIC Supplemental Health Care Exhibit, but files a form with its state of domicile. Insurance Company D chooses to determine the average number of lives covered for all years to which the section 4375 fee applies using the state form method of paragraph (c)(2)(vi)(A) of this section. The state form reports the number of lives covered in the same manner as member months is reported on the NAIC Supplemental Health Care Exhibit. For calendar year 2013, Insurance Company D reports 12,000,000 as its equivalent member months on the state form. Under the state form method, Insurance Company D calculates the average number of lives covered for all of its specified health insurance policies in force during calendar year 2013 by dividing 12,000,000 (equivalent member months) by 12 (number of months in the reporting period), which equals 1,000,000. To determine the section 4375 fee it must pay for calendar year 2013, Insurance Company D multiplies 1,000,000 by the applicable dollar amount that is in effect at the end of the calendar year under paragraph (c)(4) of this section.

(3) *Special rules for the first year and the last year the fee is in effect*—(i) *Calculation of the average number of lives covered under the policy for the first year the fee is in effect.* For issuers that determine the average number of lives covered using data reported on the 2012 NAIC Supplemental Health Care Exhibit or a permitted state form that covers the 2012 calendar year, the average number of lives covered under all policies in effect for the 2012 calendar year equals the average number of lives covered for that year (as determined under paragraph (c)(2)(v) or (vi) of this section) multiplied by ¼. The resulting number is deemed to be the average number of lives covered for policies with policy years ending on or after October 1, 2012, and before January 1, 2013. For policy years beginning before May 14, 2012 and ending on or after October 1, 2012, issuers that determine the average number of lives covered using the actual count method under paragraph (c)(2)(iii) of this section may calculate the average number of lives covered using data from the period beginning May 14, 2012 through the end of the policy year. For policy years beginning before May 14, 2012 and ending on or after October 1, 2012, issuers that determine the average number of lives covered using the snapshot method under paragraph (c)(2)(iv) of this section may calculate the average number of lives covered using dates from the quarters remaining in the policy year starting on or after May 14, 2012. If an abbreviated year is used, the issuer will divide the number of lives covered by the number of days from May 14, 2012 through the end of the policy year (for the actual count method) or the number of days on which a count was made (for the snapshot method).

(ii) *Calculation of the average number of lives covered under the policy for the last year the fee is in effect.* For issuers that determine the average number of lives covered using data reported on the 2019 NAIC Supplemental Health Care Exhibit or a permitted state form that covers the 2019 calendar year, the average number of lives covered for all policies in effect during the 2019 calendar year equals the average number of lives covered for that year (as determined under paragraph (c)(2)(v) or (vi) of this section) multiplied by ¾. The resulting number is deemed to be the average number of lives covered for policies with policy years ending on or after January 1, 2019, and before October 1, 2019.

(iii) *Example.* The following examples illustrate the principles of paragraph (c)(3) of this section:

Example 1. Insurance Company E issues Group Health Insurance Policy C, which has a policy year that ends on November 30, 2012. Insurance Company E determines the average number of lives covered under a policy by using the actual count method. Under that method, for that policy year, Insurance Company E calculates the sum of lives covered under Policy C for each day between May 14, 2012 and November 30, 2012 as 10,000. The average number of lives covered under Policy C for that policy year is 10,000 divided by the number of days from May 14, 2012 through November 30, 2012. Alternatively, Insurance Company E could have counted the number of lives covered for the entire policy year and divided the sum by 365.

Example 2. Insurance Company F reports 12,000,000 as its member months on its NAIC Supplemental Health Care Exhibit filed for calendar year 2012. Under the member months method, Insurance Company F calculates the average number of lives covered for 2012 by dividing 12,000,000 (member months) by 12 (number of months in the reporting period), and then multiplying the result (1,000,000) by ¼, which equals 250,000. Accordingly, the average number of lives covered for policies with policy years ending on or after October 1, 2012, and before January 1, 2013, is 250,000.

(4) *Applicable dollar amount.* For policy years ending on or after October 1, 2012, and before October 1, 2013, the applicable dollar amount is $1. For policy years ending on or after October 1, 2013, and before October 1, 2014, the applicable dollar amount is $2. For any policy years ending in any fiscal year beginning on or after October 1, 2014, the applicable dollar amount is the sum of—

(i) The applicable dollar amount for the policy year ending in the previous fiscal year; plus

(ii) The amount equal to the product of—

(A) The applicable dollar amount for the policy year ending in the previous fiscal year; and

(B) The percentage increase in the projected per capita amount of the National Health Expenditures most recently released by the Department of Health and Human Services before the beginning of the fiscal year.

(d) *Effective/applicability date.* This section is effective on April 17, 2012. This section applies for policies with policy years ending on or after October 1, 2012, and before October 1, 2019.

§ 46.4376–1 Fee on sponsors of self-insured health plans.

(a) *In general.* A plan sponsor of an applicable self-insured health plan is liable for a fee imposed by section 4376 for plans with plan years ending on or after October 1, 2012, and before October 1, 2019. Paragraph (b) of this section provides the definitions that apply for purposes of section 4376 and this section. Paragraph (c) of this section provides the requirements for calculating the fee imposed by section 4376. Paragraph (d) of this section provides the effective/applicability date. For rules relating to filing the required return and paying the fee, see §§ 40.6011(a)–1 and 40.6151(a)–1 of this chapter.

(b) *Definitions.* The following definitions apply for purposes of section 4376 and this section. See § 46.4377–1 for additional definitions.

(1) *Applicable self-insured health plan*—(i) *In general.* Except as provided in paragraph (b)(1)(ii) of this section and § 46.4377–1, *applicable self-insured health plan* means a plan that provides for accident or health coverage (within the meaning of § 46.4377–1(a)) if any portion of the coverage is provided other than through an insurance policy and the plan is established or maintained—

(A) By one or more employers for the benefit of their employees or former employees;

(B) By one or more employee organizations for the benefit of their members or former members;

(C) Jointly by one or more employers and one or more employee organizations for the benefit of employees or former employees;

(D) By a voluntary employees' beneficiary association, as described in section 501(c)(9);

(E) By an organization described in section 501(c)(6); or

(F) By a multiple employer welfare arrangement (as defined in section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA)), a rural electric cooperative (as defined in section 3(40)(B)(iv) of ERISA), or a rural cooperative association (as defined in section 3(40)(B)(v) of ERISA).

(ii) *Exceptions.* The term *applicable self-insured health plan* does not include any of the following:

(A) A plan that provides benefits substantially all of which are excepted benefits, as defined in section 9832(c). For example, a health flexible spending arrangement (health FSA) (as described in section 106(c)(2)) that satisfies the requirements to be treated as an excepted benefit under section 9832(c) (see also § 54.9831–1(c)(3)(v) of this chapter) is not an applicable self-insured health plan. A health FSA that is not treated as an excepted benefit under section 9832(c) is an applicable self-insured health plan.

(B) An employee assistance program, disease management program, or wellness program if the program does not provide significant benefits in the nature of medical care or treatment.

(iii) *Multiple self-insured arrangements established or maintained by the same plan sponsor.* For purposes of section 4376, two or more arrangements established or maintained by the same plan sponsor that provides for accident and health coverage (within the meaning of § 46.4377–1(a)) other than through an insurance policy and that have the same plan year may be treated as a single applicable self-insured health plan for purposes of calculating the fee imposed by section 4376. For example, if a plan sponsor establishes or maintains a self-insured arrangement providing major medical benefits, and a separate self-insured arrangement with the same plan year providing prescription drug benefits, the two arrangements may be treated as one applicable self-insured health plan so that the same life covered under each arrangement would count as only one covered life under the plan. Similarly, if a plan sponsor provides a Health Reimbursement Arrangement (HRA) that is integrated with another applicable self-insured health plan that provides major medical coverage, the HRA and the major medical plan may be treated as one applicable self-insured health plan.

(2) *Plan sponsor*—(i) *In general.* The term *plan sponsor* means—

(A) The employer, in the case of an applicable self-insured health plan established or maintained by a single employer;

(B) The employee organization, in the case of an applicable self-insured health plan established or maintained by an employee organization;

(C) The joint board of trustees, in the case of a multiemployer plan (as defined in section 414(f));

(D) The committee, in the case of a multiple employer welfare arrangement;

(E) The cooperative or association that establishes or maintains an applicable self-insured health plan established or maintained by a rural electric cooperative (as defined in section 3(40)(B)(iv) of ERISA) or rural cooperative association (as defined in section 3(40)(B)(v) of ERISA);

(F) The trustee, in the case of an applicable self-insured health plan established or maintained by a voluntary employees' beneficiary association (meaning that the voluntary employees' beneficiary association is not merely serving as a funding vehicle for a plan that is established or maintained by an employer or other person); or

(G) In the case of an applicable self-insured health plan the plan sponsor of which is not described in paragraphs (b)(2)(i)(A) through (F) of this section, the person identified by the terms of the document under which the plan is operated as the plan sponsor, or the person designated by terms of the document under which the plan is operated as the plan sponsor for section 4376 purposes, provided that designation is made, and that person has consented to the designation, by no later than the date by which the return paying the fee under section 4376 for that plan year is required to be filed, after which date that designation for that plan year may not be changed or revoked, and provided further that a person may be designated as the plan sponsor only if the person is one of the persons maintaining the plan (for example, one of the employers that is maintaining the plan with one or more other employers or employee organizations).

(H) In the case of an applicable self-insured health plan the sponsor of which is not described in paragraphs (b)(2)(i)(A) through (F) of this section, and for which no identification or designation of a plan sponsor has been made pursuant to paragraph (b)(2)(i)(G) of this section, each employer that maintains the plan (with respect to employees of that employer), each employee organization that maintains the plan (with respect to members of that employee organization), and each board of trustees, cooperative or association that maintains the plan, meaning that each plan sponsor must file a separate Form 720, ''Quarterly Federal Excise Tax Return,'' reflecting its separate liability under section 4376.

(ii) *Example.* The following examples illustrate the principles of paragraph (b)(2) of this section:

Example 1. Employer XYZ is a holding company with no employees that owns all the issued and outstanding shares of Employer X, Employer Y, and Employer Z. Employer X, Employer Y, and Employer Z have established the XYZ Group Health Plan to provide accident and health coverage, provided other than through an insurance policy, for the benefit of their employees. The

XYZ Group Health Plan has a calendar year plan year. In addition, there is no plan sponsor identified or designated in the plan document. As a self-insured health plan for employees of two or more employers, the XYZ Group Health Plan is an applicable self-insured health plan under section 4376(c)(2)(A) and paragraph (b)(1)(i)(A) of this section. However, a plan sponsor is not identified or designated in the governing plan document. Accordingly, the plan sponsor for purposes of section 4376 is identified under paragraph (b)(2)(i)(H) of this section as Employer X, Employer Y, and Employer Z, each with respect to its own employees covered under the plan. Accordingly, Employer X, Employer Y, and Employer Z each must file a Form 720 reflecting their separate liabilities under section 4376, calculated based upon lives covered that are employees of that employer, or spouses, dependents, or other beneficiaries of employees of that employer and the applicable dollar amount in effect for the plan year.

Example 2. The same facts as *Example 1,* except that the governing plan document designates Employer X as the plan sponsor of the XYZ Group Health Plan for purposes of the fee under section 4376. Accordingly, the plan sponsor for purposes of section 4376 is identified under paragraph (b)(2)(i)(G) of this section as Employer X. Employer X must file a Form 720 reflecting liabilities under section 4376, calculated based upon lives covered that are employees of Employer X, Employer Y, or Employer Z, or spouses, dependents, or other beneficiaries of employees of those employers and the applicable dollar amount in effect for the plan year.

(c) *Calculation of fee*—(1) *In general.* The amount of the fee for a plan year is equal to the product of the average number of lives covered under the plan for the plan year (determined in accordance with paragraph (c)(2) of this section) and the applicable dollar amount (determined in accordance with paragraph (c)(3) of this section). For more information, see the examples in paragraphs (c)(2)(iii)(B), (c)(2)(iv)(D), and (c)(2)(v)(B) of this section.

(2) *Determination of the average number of covered lives under the plan*—(i) *In general.* To determine the average number of lives covered under an applicable self-insured health plan during a plan year, a plan sponsor must use one of the following—

(A) The actual count method (described in paragraph (c)(2)(iii) of this section);

(B) The snapshot dates method (described in paragraph (c)(2)(iv) of this section); or

(C) The Form 5500 method (described in paragraph (c)(2)(v) of this section).

(ii) *Consistency within plan year.* A plan sponsor must use the same method of calculating the average number of lives covered under the plan consistently for the duration of the plan year. However, a plan sponsor may use a different method from one plan year to the next.

(iii) *Actual count method*—(A) *Calculation method.* A plan sponsor may determine the average number of lives covered under a plan for a plan year by adding the totals of lives covered for each day of the plan year and dividing that total by the number of days in the plan year.

(B) *Example.* The following example illustrates the principles of paragraphs (c)(1) and (c)(2)(iii)(A) of this section:

Example. Employer A is the plan sponsor of the Employer A Self-Insured Health Plan, which has a calendar year plan year. Employer A calculates the sum of covered lives under the plan for each day of the plan year ending December 31, 2013 as 3,285,000. The average number of covered lives under the plan for the plan year ending December 31, 2013 is 3,285,000 divided by 365, or 9,000. To calculate the section 4376 fee for the plan under paragraph (c)(1) of this section for the plan year ending December 31, 2013, Employer A must determine the applicable dollar amount under paragraph (c)(3) of this section and multiply that amount by the average number of lives covered under the plan.

(iv) *Snapshot methods*—(A) *In general.* A plan sponsor may determine the average number of lives covered under a plan for a plan year by adding the totals of lives covered on one date in each quarter, or more dates if an equal number of dates are used for each quarter, and dividing that total by the number of dates on which a count was made. For this purpose, the date or dates for each quarter must be the same (for example, the first day of the quarter, the last day of the quarter, the first day of each month, etc.). For purposes of this paragraph (c)(2)(iv), the number of lives covered on a designated date may be determined using either the snapshot factor method described in paragraph (c)(2)(iv)(B) of this section or the snapshot count method described in paragraph (c)(2)(iv)(C) of this section.

(B) *Snapshot factor method.* Under the snapshot factor method, the number of lives covered on a date is equal to the sum of the number of participants with self-only coverage on that date, plus the product of the number of participants with coverage other than self-only coverage on the date and 2.35.

(C) *Snapshot count method.* Under the snapshot count method, the number of lives covered on a date equals the actual number of lives covered on the designated date.

(D) *Examples.* The following examples illustrate the principles of paragraphs (c)(1) and (c)(2)(iv) of this section:

Example 1. Employer B is the plan sponsor of the Employer B Self-Insured Health Plan, which has a calendar year plan year. Employer B has designated the first day of each quarter of the plan year as the date that Employer B counts the covered lives under the Employer B Self-Insured Health Plan. On January 1, 2013, Employer B Self-Insured Health Plan covers 2,000 covered lives, on April 1, 2013, 2,100 covered lives, on July 1, 2013, 2,050 covered lives, and on October 1, 2013, 2,050 covered lives. Under the snapshot count method, Employer B must determine the average number of covered lives under the Employer B Self-Insured Health Plan for the plan year ending December 31, 2013 as 8,200 (2,000 + 2,100 + 2,050 + 2,050) divided by 4, or 2,050. To calculate the section 4376 fee under paragraph (c)(1) of this section for the plan year ending December 31, 2013, Employer B must determine the applicable dollar amount under paragraph (c)(3) of this section and multiply that amount by the average number of lives covered under the plan.

Example 2. Same facts as *Example 1,* except Employer B determines the number of covered lives not covered by self-only coverage based on the number of participants with coverage other than self-only multiplied by 2.35 (the factor set forth in (c)(2)(iv) of this section). On January 1, 2013, Employer B Self-Insured Health Plan provides self-only coverage to 600 employees and other than self-only coverage to 800 employees. On April 1, 2013, Employer B Self-Insured Health Plan provides self-only coverage to 608 employees and other than self-only coverage to 800 employees. On July 1, 2013 and October 1, 2013, Employer B Self-Insured Health Plan provides self-only coverage to 610 employees and other than self-only coverage to 809 employees. Under the snapshot factor method, Employer B must determine the average number of covered lives under the Employer B Self-Insured Health Plan for the plan year ending December 31, 2013 as 9,988 [(600+(800 x 2.35)) + (608 + (800 x 2.35)) + (610 + (809 x 2.35)) + (610 + (809 x 2.35))] divided by 4, or 2,497. To calculate the section 4376 fee under paragraph (c)(1) of this section for the plan year ending December 31, 2013, Employer B must determine the applicable dollar amount under paragraph (c)(3) of this section and multiply that amount by the average number of lives covered under the plan.

(v) *Form 5500 method*—(A) *Calculation method.* A plan sponsor may determine the average number of lives covered under a plan for a plan year based on the number of reportable participants for the Form 5500, ''Annual Return/Report of Employee Benefit Plan,'' that is filed for the applicable self-insured health plan for that plan year. For purposes of this paragraph (c)(2)(v), the average number of lives covered under the plan for the plan year for a plan offering only self-only coverage equals the sum of total participants covered at the beginning and the end of the plan year, as reported

on the Form 5500 filed for the applicable self-insured health plan, divided by 2. For purposes of this paragraph (c)(2)(v), the average number of lives covered under the plan for the plan year for a plan offering self-only coverage and coverage other than self-only coverage equals the sum of total participants covered at the beginning and the end of the plan year, as reported on the Form 5500 filed for the applicable self-insured health plan.

(B) *Examples.* The following examples illustrate the principles of paragraphs (c)(1) and (c)(2)(v)(A) of this section:

Example 1. Employer C is the plan sponsor of the Employer C Self-Insured Health Plan, which has a fiscal year plan year ending on July 31, 2013 and offers only self-only coverage. Employer C files a Form 5500 for the Employer C Self-Insured Health Plan for the plan year ending July 31, 2013 reflecting 4,000 plan participants on the first day of the plan year and 4,200 plan participants on the last day of the plan year. For purposes of calculating the fee under section 4376 using the Form 5500 method, Employer C must treat the number of covered lives for the plan year ending July 31, 2013 as equal to the sum of 4,000 and 4,200 or 8,200, divided by 2, or 4,100. To calculate the section 4376 fee under paragraph (c)(1) of this section for the plan year ending July 31, 2013, Employer C must determine the applicable dollar amount under paragraph (c)(3) of this section and multiply that amount by the average number of lives covered under the plan.

Example 2. Same facts as *Example 1,* except that the Employer C Self-Insured Health plan offers self-only coverage and family coverage. For purposes of calculating the fee under section 4376 using the Form 5500 method, Employer C must treat the number of covered lives for the plan year ending July 31, 2013 as equal to the sum of 4,000 and 4,200, or 8,200. To calculate the section 4376 fee under paragraph (c)(1) of this section for the plan year ending July 31, 2013, Employer C must determine the applicable dollar amount under paragraph (c)(3) of this section and multiply that amount by the average number of lives covered under the plan.

(vi) *Special rule for health FSAs and HRAs.* For purposes of this section, if a plan sponsor does not maintain an applicable self-insured health plan other than a health flexible spending arrangement (health FSA) (as described in section 106(c)(2)) or a health reimbursement arrangement (as described in Notice 2002–45 (2002–2 CB 93)) (HRA), the plan sponsor may treat each participant's health FSA or HRA as covering a single covered life (and therefore the plan sponsor is not required to include as covered lives any spouse, dependent, or other beneficiary of the individual participant in the health FSA or HRA, as applicable). If a health FSA or HRA that is an applicable self-insured health plan has the same plan sponsor as another applicable self-insured health plan other than a health FSA or HRA, the two arrangements may be treated as a single plan under paragraph (b)(1)(iii) of this section. However, the special counting rule in this paragraph applies only for purposes of the health FSA or HRA and, therefore, applies only for purposes of the participants in the health FSA or HRA that do not participate in the other applicable self-insured health plan. (The participants in the health FSA or HRA that participate in the other applicable self-insured health plan will be counted in accordance with the method applied for counting lives under that other plan as described in paragraph (b)(2)(i) of this section.) See § 601.601(d)(2) of this chapter.

(vii) *Special rule for the first year the fee is in effect.* Notwithstanding paragraph (c)(2)(i) of this section, for plan years beginning before July 11, 2012 and ending on or after October 1, 2012, a plan sponsor may determine the average number of lives covered under the plan for the plan year using any reasonable method.

(3) *Applicable dollar amount.* For plan years ending on or after October 1, 2012, and before October 1, 2013, the applicable dollar amount is $1. For plan years ending on or after October 1, 2013, and before October 1, 2014, the applicable dollar amount is $2. For any plan year ending in any fiscal year beginning on or after October 1, 2014, the applicable dollar amount is equal to the sum of—

(i) The applicable dollar amount for plan years ending in the previous fiscal year; plus

(ii) The amount equal to the product of—

(A) The applicable dollar amount for plan years ending in the previous fiscal year; and

(B) The percentage increase in the projected per capita amount of the National Health Expenditures most recently released by the Department of Health and Human Services before the beginning of the fiscal year.

(d) *Effective/applicability date.* This section is effective on April 17, 2012. This section applies for plan years that end on or after October 1, 2012, and before October 1, 2019.

§ 46.4377–1 Definitions and special rules.

(a) *Definitions.* The following definitions apply for purposes of sections 4375 and 4376 and §§ 46.4375–1 and 46.4376–1.

(1) *Accident and health coverage.* The term *accident and health coverage* means any coverage that, if provided by an insurance policy, would cause such policy to be a specified health policy (as defined in section 4375(c)).

(2) *Individual residing in the United States*—(i) The term *individual residing in the United States* means an individual with a place of abode in the United States.

(ii) *Determination of place of abode.* For purposes of paragraph (a)(2) of this section, an issuer or a plan sponsor may rely on the most recent address on file with the issuer or plan sponsor and may treat the primary insured and the primary insured's spouse, dependents, or other beneficiaries covered by the policy, as having the same place of abode. For this purpose, the primary insured is the individual covered by the policy other than due to that individual's status as the spouse, dependent, or other beneficiary of another covered individual.

(3) *United States.* The term *United States* includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands, and any other possession of the United States.

(4) *Fiscal year.* The term *fiscal year* means the year beginning on October 1 and ending on the following September 30.

(b) *Treatment of exempt governmental programs*—(1) *In general.* The fees imposed by sections 4375 and 4376 do not apply to any covered life under an exempt governmental program as defined in paragraph (b)(2) of this section.

(2) *Exempt governmental program.* For purposes of this section, *exempt governmental program* means any—

(i) Insurance program established under title XVIII of the Social Security Act;

(ii) Medical assistance program established by title XIX or XXI of the Social Security Act;

(iii) Program established by Federal law for providing medical care (other than through insurance policies) to individuals (or their spouses and dependents) by reason of such individuals being (or having been) members of the Armed Forces of the United States; and

(iv) Program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act).

(c) *Effective/applicability date.* This section is effective on April 17, 2012. This section applies to all policies and

plans to which section 4375 or 4376 applies.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–9173 Filed 4–12–12; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2011–0551]

Special Local Regulation and Safety Zone; America's Cup Sailing Events, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of a draft environmental assessment of the temporary special local regulation and temporary safety zone proposed for those portions of the ''America's Cup World Series,'' the ''Louis Vuitton Cup'' challenger selection series, and the ''America's Cup Finals Match'' sailing regattas that may be conducted in the waters of San Francisco Bay adjacent to the City of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island between August and September 2012 and between July and September 2013. We request your comments on this draft environmental assessment.

DATES: Comments and related material must be submitted to our online docket via *http://www.regulations.gov* on or before April 30, 2012, or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0551 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 or email LCDR Aaron Lubrano, Coast Guard Sector San Francisco, U.S. Coast Guard; telephone (415) 399–3446, email *Aaron.C.Lubrano@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:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the draft environmental assessment. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2011–0551) 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 telephone 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*, type ''USCG–2011–0551'' and click ''Search.'' Then click ''Submit a Comment'' 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 them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments and draft environmental assessment: To view the comments and draft environmental assessment, go to *http://www.regulations.gov,* type ''USCG–2011–0551'' and click ''Search.'' Then click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may view the docket online by visiting 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.

Privacy Act: 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, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

The America's Cup Race Management has applied for a Marine Event Permit to hold the 34th America's Cup races on the waters of San Francisco Bay in California. The Coast Guard has not approved the Marine Event Permit and is still evaluating the application, including the potential environmental impact of the requested permit. If the permit is approved, however, we anticipate that a special local regulation may be necessary to ensure public safety during the races. To provide adequate time for public input, we proposed a special local regulation and safety zone on January 30, 2012 (77 FR 4501).

In the January 2012 notice of proposed rulemaking, the Coast Guard proposed regulations for the 2012 and 2013 races. These include proposed regulated areas surrounding the primary and contingent race areas; a designated area for recreational swimmers, rowers, and kayakers; a transit zone for using during the 2013 races; restrictions on vessel traffic and the use of Anchorage No. 7; and a safety zone around racing vessels. These proposed rules are temporary and would be enforced only on race days. The public comment period on these proposed rules remains open through April 30, 2012. If the Marine Event Permit is not approved, we will withdraw the proposed rules.

Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD, we have prepared a draft environmental assessment (EA) of the proposed special local regulation and safety zone described above. The draft EA, which is available in the docket, identifies and

examines the reasonable alternatives and assesses their potential environmental impact. It also identifies the preferred alternative and how it affects the proposed rulemaking.

We request your comments on environmental concerns that you may have related to the draft EA. This includes suggesting analyses and methodologies for use in the EA or possible sources of data or information not included in the draft EA. Your comments will be considered in preparing the final EA.

This notice is issued under the authority of 5 U.S.C. 552(a), and 33 CFR 1.05–1, 100.35, and 165.5.

Dated: March 29, 2012.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2012–9070 Filed 4–16–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712, 716, 720, 721, 723, 725, 766, 790, and 799

[EPA–HQ–OPPT–2011–0519; FRL–9337–5]

RIN 2070–AJ75

Electronic Reporting Under the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to require electronic reporting for information that must be submitted under Toxic Substances Control Act (TSCA) section 4 (pursuant to test rules and enforceable consent agreements (ECAs)), TSCA section 8(a) Preliminary Assessment Information Rule (PAIR), and TSCA section 8(d) Health and Safety Data Reporting rules. Additionally, EPA is proposing amendments to certain TSCA section 5 reporting regulations that would extend electronic reporting requirements to Notices of Commencement of Manufacture or Import (NOCs) and support documents (*e.g.,* correspondence, amendment, and test data) relating to TSCA section 5 notices submitted to EPA before April 6, 2010. This proposed rule would require the use of EPA's Central Data Exchange (CDX) and the Chemical Information Submission System (CISS) web-based reporting tool for the submission of forms, reports, and other documents except for TSCA section 5 submissions, which would use existing e-PMN software. This action is intended to streamline the reporting process and reduce the administrative costs associated with information submission and recordkeeping.

DATES: Comments must be received on or before June 18, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0519, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online 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. Attention: Docket ID Number EPA–HQ–OPPT–2011–0519. 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: Direct your comments to docket ID number EPA–HQ–OPPT–2011–0519. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless 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:* Katherine Sleasman, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–7716; email address: *sleasman.katherine@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?

You may be potentially affected by this action if you manufacture (including import), process, or distribute in commerce chemical substances and mixtures. Potentially affected entities may include, but are not limited to:

- Chemicals and Allied Products Manufacturers (NAICS 32411).
- Petroleum Refining (NAICS Codes 325 and 32411).

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 technical 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. Background

A. What action is the Agency taking?

The Agency is proposing regulations to require electronic reporting of information submitted under TSCA section 4 (including test rules and ECAs), TSCA section 8(a) PAIR rule at 40 CFR part 712, and TSCA section 8(d) Health and Safety Data Reporting rules to require use of CISS, a web-based reporting tool.

The Agency is also proposing to extend TSCA section 5 electronic reporting requirements to NOCs and support documents (e.g., correspondence, amendments, and test data) relating to TSCA section 5 notices submitted to EPA prior to April 6, 2010, the effective date of the e-PMN final rule (Ref. 1). Currently, follow-up submissions for TSCA section 5 notices submitted before this date are not subject to electronic reporting requirements.

The Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504) provides that, when practicable, Federal organizations use electronic forms, electronic filings, and electronic signatures to conduct official business with the public. EPA's Cross-Media Electronic Reporting Regulation (CROMERR) (40 CFR part 3) (Ref. 2), provides that any requirement in title 40 of the CFR to submit a report directly to EPA can be satisfied with an electronic submission that meets certain conditions once the Agency published a document in the **Federal Register** announcing that EPA is prepared to receive certain documents in electronic form. For more information about CROMERR, go to *http://www.epa.gov/cromerr.*

This action would require electronic reporting under TSCA section 4 test rules and ECAs, TSCA section 8(a) PAIR, TSCA section 8(d) regulations, and TSCA section 5-related reporting provisions where electronic reporting is not already required, taking into consideration the frequency of reporting under these regulations. EPA is considering undertaking additional rulemaking regarding requiring electronic reporting for other TSCA requirements that currently include paper-reporting obligations. Once this proposed rule becomes effective, EPA would accept only data, reports, and other information submitted through CDX. Data, reports, and other information not submitted in the manner required would be considered invalid by EPA. In addition, the Agency encourages that voluntary submissions, such as those under Memoranda of Understandings (MOUs), also be submitted through CDX. The following regulations would be affected:

1. *TSCA section 4 test rules and ECAs.* Documents required under TSCA section 4, include but are not limited to, letters of intent to conduct testing (40 CFR 790.45), extension requests (40 CFR 790.50), modification requests (40 CFR 790.55), exemption requests (40 CFR 790.80 and 40 CFR 790.82), hearing requests (40 CFR 790.90), and data required to be developed under rules at 40 CFR part 799, and documents and correspondence related to ECAs negotiated pursuant to 40 CFR part 790. Affected sections would include those relating to submission or modification of a study plan (40 CFR 790.62), and requests to modify the test schedule for any test required under the consent agreement (40 CFR 790.68). Electronic reporting requirements for TSCA section 4 rules and ECAs would be added to 40 CFR 766.7, 790.5, and 799.50.

2. *TSCA section 5.* Additionally, EPA is proposing amendments to certain TSCA section 5 reporting regulations that would extend electronic reporting requirements to NOCs and support documents (e.g., correspondence, amendment, and test data) relating to TSCA section 5 notices submitted to EPA before April 6, 2010. The e-PMN final rule (Ref. 1) requires submitters of NOCs and support documents whose original notices were submitted to EPA prior to April 6, 2010 (''legacy notices'') to submit those NOCs and support documents to EPA in hard copy. At the time the final rule was published, EPA believed the hard-copy submission of these documents was necessary because the Agency intended to operate two different databases; one for storing TSCA section 5 notices submitted to EPA after April 6, 2010, and another for storing legacy notices. EPA originally intended to enter legacy notices only into EPA's ''legacy database,'' i.e., the database used prior to April 6, 2010, and so a subsequent NOC or support document would not have been able to be linked up with its original or ''parent'' legacy notice if it was entered into EPA's new database.

However, since publication of the e-PMN final rule, EPA's electronic reporting program has evolved and EPA now has the ability to house both legacy notices and notices submitted after April 6, 2010, in the same database. EPA is therefore proposing to amend the regulations at 40 CFR parts 720, 721, 723, and 725 to require NOCs and support documents for TSCA section 5 notices originally submitted prior to April 6, 2010, to be submitted electronically allowing them to be

stored with their legacy TSCA section 5 notices in the new database.

Within the e-PMN final rule, EPA phased-in electronic reporting of TSCA section 5 notices and their related NOCs and support documents over a 2-year period that ends April 6, 2012. Within this proposed rule, EPA would remove the regulatory text related to the phase-in because by the time this proposed rule is finalized, EPA expects the phase-in period will be over and all TSCA section 5 notices, NOCs, and support documents would be required to be submitted to EPA via CDX.

3. *TSCA section 8(a) PAIR.* Electronic reporting requirements for Form 7710–35, Manufacturer's Report—Preliminary Assessment Information (Manufacturer's Report) would be included in 40 CFR 712.28 and 712.30.

4. *TSCA section 8(d).* The submission of data, reports, and other documents are required under the TSCA section 8(d) Health and Safety Data reporting rule at 40 CFR part 716 and the Dibenzo-para-dioxins/Dibenzofurans rule at 40 CFR part 766 (specifically 40 CFR 716.30, 716.35, 716.60, and 766.7). Additional affected sections of 40 CFR part 716 would include: The submission of underlying data, preliminary reports of ongoing studies, additional copies of studies (40 CFR 716.40), requests for extension of time (40 CFR 716.60), and requests for withdrawal of a chemical substance from a rule (40 CFR 716.105).

B. What is the Agency's authority for taking this action?

The Agency collects information from manufacturers and processors of chemical substances under TSCA section 4 regulations, TSCA section 8(a) PAIR, and TSCA section 8(d) regulations. Section 4 of TSCA authorizes EPA to require manufacturers and processors of chemical substances and mixtures to perform testing to generate data relevant to a determination whether the manufacture, distribution in commerce, processing, use, or disposal of such chemical or mixtures presents an unreasonable risk of injury to health or the environment. Some TSCA section 4 testing data are required via ECAs. Section 8(a) of TSCA gives EPA authority to promulgate rules to require that manufacturers (includes importers) and processors of chemical substances and mixtures report such data as EPA may reasonably require. One TSCA section 8(a) reporting rule is the PAIR at 40 CFR part 712. The PAIR requires chemical manufacturers and importers to complete and submit to EPA a standardized reporting form with information to help facilitate the evaluation of the potential adverse human health and environmental effects from exposure to identified chemical substances, mixtures, or categories. Under TSCA section 8(d), EPA has the authority to promulgate rules to require manufacturers (including importers), processors, and distributors to submit lists and/or copies of ongoing and completed unpublished health and safety studies.

Section 5(a)(1)(A) of TSCA requires persons to notify EPA at least 90 days before manufacturing a new chemical substance for commercial purposes (under TSCA manufacture includes import). Section 3(9) of TSCA defines a ''new chemical substance'' as any chemical substance that is not on the TSCA Inventory of Chemical Substances compiled by EPA under TSCA section 8(b). Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by a Significant New Use Rule (SNUR) after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a Significant New Use Notice (SNUN) to EPA at least 90 days before manufacturing or processing the chemical substance for that use.

C. Is electronic reporting currently required in other EPA TSCA programs?

Since 2006, under the TSCA section 8(a) Inventory Update Reporting rule (IUR), manufacturers (including importers) have been able to submit IUR information electronically to the EPA through CDX (Ref. 3). EPA is improving upon the 2006 IUR electronic reporting software by making electronic reporting easier and more accessible to potential reporters, including non-U.S. companies and those submitters filing jointly. On August 16, 2011 (Ref. 4), the Agency published the final Chemical Data Reporting (CDR) rule, amending and renaming the IUR rule and making electronic reporting mandatory, beginning with the 2012 submission period. In addition, on January 6, 2010, EPA published the e-PMN final rule, which phased in electronic reporting requirements for TSCA section 5 notices and other related documents over a 2-year period. After the 2-year phase-in period ends on April 6, 2012, the final rule mandates electronic reporting for these documents (Ref. 1).

III. Description of Proposed Changes to Reporting Procedures

This unit provides an overview of EPA's CDX, CISS, and e-PMN software for NOCs and support documents associated with legacy TSCA section 5 notices, the proposed changes to the TSCA reporting process, and the benefits of electronic reporting to both industry and EPA.

A. What is CDX?

CDX is EPA's electronic system for environmental data exchange to the Agency. CDX also provides the capability for submitters to access their data through the use of web services. CDX enables EPA to work with stakeholders, including governments, regulated industries, and the public to enable streamlined, electronic submission of data via the Internet. For more information about CDX, go to *http://epa.gov/cdx.*

B. What is CISS?

EPA developed CISS for use in submitting data for TSCA sections 4, 8(a), and 8(d) electronically to the Agency. The tool is available for use with Windows, Macs, Linux, and UNIX based computers, using ''Extensible Markup Language'' (XML) specifications for efficient data transmission across the Internet. CISS, a web-based reporting tool, provides user-friendly navigation, works with CDX to secure online communication, creates a completed Portable Document Format (PDF) for review prior to submission, and enables data, reports, and other information to be submitted easily as PDF attachments, or by other electronic standards, such as XML.

C. What is the e-PMN software for TSCA section 5?

EPA developed e-PMN software for use in preparing and submitting Premanufacture Notices (PMNs) and other TSCA section 5 notices and support documents electronically to the Agency. For further information on the software capabilities, please visit the TSCA New Chemicals Program Web site *http://www.epa.gov/oppt/newchems.* Also, see the e-PMN final rule for further guidance (Ref. 1).

D. What are the benefits of CDX reporting and use of CISS and the e-PMN software?

The effort to eliminate paper-based submissions in favor of CDX reporting, including use of CISS, is part of broader government efforts to move to modern, electronic methods of information gathering. CISS and e-PMN software enable more efficient data transmittal and reduce errors with the built-in validation procedures. EPA believes the adoption of electronic reporting reduces the reporting burden for submitters by

reducing the cost and time required to review, edit, and transmit data to the Agency. It also allows submitters to share a draft submission within their organization, and more easily save a copy for their records or future use. The resource and time requirements to review and process data by the Agency will also be reduced and document storage and retrieval will require fewer resources. EPA expects to benefit from receiving electronic submissions and communicating back electronically with submitters. In addition, the use of CDX, CISS, and e-PMN software ensures the legal dependability of electronic reports so that they meet the needs of the compliance and enforcement programs. The legal dependability of electronically submitted documents is enhanced by valid electronic signatures that can be submitted into evidence, assurance that electronic documents can be authenticated to provide evidence of what an individual submitted and/or attested to, and assurance that electronic signatures resist repudiation by the signatory (Ref. 5).

E. How would data, reports, and other documents required under TSCA sections 4, 8(a) PAIR, and 8(d) be submitted via the Internet using CDX?

This proposed rule would require submitters to register with EPA's CDX and use CISS to prepare a data file for submission.

1. *Registering with CDX.* Registration enables CDX to perform two important functions:

i. Authentication of identity.

ii. Verification of authorization.

To submit electronically to EPA via CDX, individuals must first register with that system at *http://cdx.epa.gov/epa_home.asp.*

To register in CDX, the CDX registrant (also referred to as ''Electronic Signature Holder'' or ''Public/Private Key Holder'') agrees to the Terms and Conditions, provides information about the submitter and organization, selects a user name and password, and follows the procedures outlined in the guidance document for CDX available at *http://www.epa.gov/cdr/tools/CDX_Registration_Guide_v0_02.pdf.*

Users who have previously registered with CDX for TSCA section 5 submissions, or the Toxic Release Inventory TRI–ME web reporting flow, will be able to add the ''Submission for Chemical Safety and Pesticide Program (CSPP)'' CDX flow to their current registration, and use the CISS web-based reporting tool.

2. *Preparing the submission.* All submitters would be required to use CISS to prepare their submissions. CISS guides users through a ''hands-on'' process of creating an electronic submission. Once a user completes the relevant data fields, attaches appropriate PDF files, or other file types, such as XML files, and completes metadata information, the web-based tool validates the submission by performing a basic error check and makes sure all the required fields and attachments are provided and complete. Further instructions on submitting voluntary submissions, such as under MOUs, are available, and instructions for uploading PDF attachments or other file types, such as XML, and completing metadata information would be available through CISS reporting guidance.

3. *Completing the submission to EPA.* CISS, a web-based reporting tool, also allows the user to choose ''Print,'' ''Save,'' or ''Transmit through CDX.'' When ''Transmission through CDX'' is selected, the user is asked to provide the user name and password that was created during the CDX registration process. CISS then encrypts the file and submits it via CDX.

4. *Correspondence through CDX.* The user will log in to the application and check the status of their submissions. Upon successful receipt of the submission by EPA, the status of the submissions will be flagged as ''Completed.'' The CDX inbox is currently used to notify the users of any correspondence related to user registration. Information on accessing the CDX user inbox is provided in the guidance document for CDX at *http://www.epa.gov/cdr/tools/CDX_Registration_Guide_v0_02.pdf.*

F. How would TSCA section 5 NOCs and support documents relating to legacy TSCA section 5 notices be submitted to EPA?

EPA is proposing that NOCs and support documents relating to legacy TSCA section 5 notices be submitted to EPA using the same process and timeline as described in 40 CFR 720.40(a)(2), see Unit II.A.3. All NOCs and support documents would be required to be generated using e-PMN software and be completed through the finalization step of the software. See the e-PMN final rule (Ref. 1) for more detailed information on the process and timeline for submitting NOCs and support documents.

G. How would CBI be submitted using CISS?

All information sent by the submitter via CDX is transmitted securely to protect CBI. CISS enables the user to submit CBI in an electronic format. The reporting tool guides the user through the process of submitting CBI by prompting the submitter to check a CBI checkbox if using a form or by submitting a scanned document containing CBI by bracketing, underlining, or otherwise marking the confidential information on the document to be submitted prior to scanning. Documents containing information claimed as CBI would have to be submitted in an electronic format, in accordance with the recordkeeping requirements (Ref. 5) and the following regulations:

1. *TSCA section 4 test rules and ECAs.* Documents required under TSCA section 4 that may contain information claimed as CBI include study plans submitted in accordance with test rules (40 CFR 790.50) and study plans submitted in accordance with an ECA (40 CFR 790.62). CISS would allow the submitter to indicate if a study plan contains information claimed as CBI by checking the appropriate box. Then, the submitter would be prompted to submit the study plan document in an electronic format. The submitter would need to indicate which information in the study plan contains information claimed as CBI by marking the specific information claimed as confidential and designating it with the words ''confidential business information,'' ''trade secret,'' or another appropriate phrase in the document prior to scanning. Subsequently, if CBI is claimed in either a study plan for test rules or an ECA, the submitter would be prompted by CISS to substantiate those claims by answering the substantiating questions pursuant to 40 CFR 790.7 in a document submitted in an electronic format.

2. *TSCA section 8(a) PAIR.* CISS would include areas for indicating CBI on Form 7710–35, Manufacturer's Report (40 CFR 712.28 and 712.30). If CBI is indicated on Form 7710–35, the reporting tool would prompt the submitter to certify that the confidentiality statements are true by prompting the submitter to select the ''Confidentiality Certification Statement.''

3. *TSCA section 8(d).* Documents submitted under TSCA section 8(d) that contain information claimed as CBI would have to be indicated as such by using CISS. CISS would allow the submitter to indicate if the document contains CBI by checking the appropriate box. Then, the submitter would be prompted to submit the document in an electronic format. In submitting a document that contains CBI, CISS would prompt the submitter to submit two copies of the document in an electronic format. The copy

containing CBI would need to identify the confidential information by bracketing or underlining the information and labeling the copy ''confidential,'' ''proprietary,'' or ''trade secret.'' The non-CBI second copy would need to have all confidential information deleted. Once CBI is claimed, CISS would prompt the submitter to substantiate their claims (40 CFR 716.55).

The user guide would also instruct users on how to submit and substantiate CBI information using CISS.

H. Would CBI be protected when submitting via CDX?

All information sent by the submitter via CDX would be transmitted securely to protect CBI. Furthermore, if anything in the submission is claimed as CBI, a non-CBI copy of the submission would have to be provided by the submitter. The guidance document would instruct users on how to submit and substantiate CBI information using CISS.

The Agency ensures secure transmission of the data, reports, and other documents sent from the user's desktop through the Internet via the Transport Layer Security (TLS) 1.0 protocol. TLS 1.0 is a widely used approach for securing Internet transactions and is endorsed by the National Institute of Standards and Technology (NIST) as a means for protecting data sent over the Internet. See NIST Special Publication 800–52, ''Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations.'' Available online at *http://csrc.nist.gov/publications/nistpubs/800-52/SP800-52.pdf.*

In addition, CISS enables the submitter to electronically sign, encrypt, and transmit submissions which EPA subsequently provides back to the submitter as an unaltered copy of record. This assures the submitter that the Agency has received exactly what the submitter sent to EPA. CISS encrypts using a module based on the 256-bit Advanced Encryption Standard (AES) adopted by NIST. Details about AES can be found on the NIST Web site at *http://csrc.nist.gov/publications/fips/fips197/fips-197.pdf,* and EPA may incorporate other encryption modules into future versions of the tool (such versions might be developed before or after the final rule is to take effect depending upon availability and suitability). Information submitted via CDX is processed within EPA by secure systems certified for compliance with Federal Information Processing Standards.

I. Would EPA offer any exceptions to the proposed requirements?

The Agency does not expect to offer any exceptions to any final requirements to submit data, reports, and other documents affected by this proposed rule electronically. The Agency believes that the overall benefits of using CISS and e-PMN software, and submission through CDX exceed those associated with maintaining a paper-based reporting approach. The proposed electronic reporting requirements are not the first that would mandate electronic reporting as explained in Unit II.C. For example, the e-PMN final rule provided for a phased-in approach using CDX in three phases over a 2-year period. During the first year following the April 6, 2010 effective date of the final rule, the Agency allowed submissions via CDX, optical disc (CD or DVD), and paper. Paper submissions are no longer accepted, and optical discs will no longer be accepted after April 6, 2012. The phased-in approach was designed to allow submitters to gain experience using the e-PMN software and the submission delivery system (Ref. 6).

On August 16, 2011, the Agency published the final rule for the TSCA Inventory Update Reporting Modifications; Chemical Data Rule (Ref. 4). This final rule requires electronic reporting and does not provide for a phased-in approach. Previously, in 2006 EPA accepted the 2006 IUR submissions electronically via CDX, optical discs, and paper-based methods. However, by allowing submissions to be received through a variety of mechanisms, the time and resources needed to review and correct submitter and scanning-related errors took the Agency over 2 years to validate and process for the 2006 IUR. By requiring submissions to be sent via CDX and the e-CDR web-based reporting tool, called e-CDRweb, resources and the number of errors should be greatly reduced.

The Agency recognizes that there is the potential for costs and burdens associated with predictable or unanticipated technical difficulties in electronic filing or with conversion to an electronic format. Since the use of CDX has been in existence for a number of years and has undergone a number of enhancements, EPA expects the potential for difficulty to be minimal. However, EPA expects that reduced reporting costs to submitters would ultimately exceed the transition costs (see Economic Analysis referenced in Unit IV.).

J. How will the agency provide opportunities for potential users to become familiar with the reporting tool?

The Agency will offer a webinar open to the public for potential users to become familiar with CISS before its release following publication of the final rule. The webinar will be recorded and available at *http://www.epa.gov/oppt/chemtest/ereporting/index.html.* An ''Industry Day'' will be scheduled to allow users to become familiar with CISS in a collaborative setting. Industry Day details will be announced in the **Federal Register**. There will also be a week-long familiarization opportunity to allow users to become accustomed with CISS on their own and to provide comments to the Agency on its functionality.

IV. Economic Analysis

The Agency's estimated economic impact of this proposed rule is presented in a document entitled ''Economic Analysis for the Electronic Reporting under TSCA Section 4, Section 5 NOCs, Section 8(a) PAIR, and Section 8(d)'' (Ref. 7) (Economic Analysis), a copy of which is available in the docket and is briefly summarized in this unit. If a TSCA section 5 PMN or a SNUN was submitted after the effective date (April 6, 2010) of the e-PMN final rule it would be subject to the e-PMN final rule and is required to be submitted electronically online. However, if a TSCA section 5 PMN or SNUN was submitted prior to the effective date of the e-PMN final rule (April 2010), it must be printed and mailed as hard copy to the Agency. This proposed rule would require all NOC and supporting documents whose original notices were submitted on paper before the new system was implemented to now be submitted electronically via the CDX system.

EPA estimated that this proposed rule, if finalized, would result in cost savings to the affected companies because the time required to enter, review, edit, and submit their reports using CDX would be reduced compared to the existing paper-based process.

EPA estimated that this proposed rule would result in total cost to the industry of approximately $14,061 in year 1 and a cost savings of $66,834 in each subsequent year. The cost savings in subsequent years are greater than those in year 1 because of the one-time CDX registration costs incurred at the initial submission. EPA assumed that industry would continue to realize cost savings each additional year.

EPA estimates that the Agency also would experience a reduction in the

cost to administer submissions of data under TSCA in the long-run. Due to the one-time development cost of $200,000 for CDX in year 1 and an annual CDX Operations and Maintenance (O&M) cost of $57,353, EPA would incur a cost of $197,918 in year 1, after accounting for $59,435 in savings resulting from the burden reductions associated with electronic processing of submissions within the Agency. However, in subsequent years, EPA would only incur the $57,353 annually in O&M costs, resulting in the Agency savings of $2,082 a year in subsequent years.

In addition to the quantifiable cost savings, EPA believes this proposed rule would result in other benefits. For example, electronic reporting would allow for faster review and transmission of submissions to EPA. For studies containing CBI, electronic reporting would also improve security during transmission of CBI data to EPA. Additionally, all information submitted electronically could be linked in a tracking system, which would facilitate document management efforts. This would allow companies to manage past and future submissions more easily.

EPA received 9,280 TSCA section 5 supporting documents between April 1, 2005 and June 22, 2011, with an average of 1,510 supporting documents each year. EPA assumed that the impact of this proposed rule on TSCA section 5 supporting documents would be very minimal given that industry has already undertaken electronic submission of such supplemental materials.

V. Request for Comment

The Agency is specifically soliciting comments on the following five topics. EPA encourages all interested persons to submit comments on these five topics or other relevant topics and submission of data via CDX. This input will assist the Agency in developing a final rule that addresses information needs while minimizing reporting burdens associated with paper-based reporting. EPA requests that comments include specific recommendations, where appropriate, including cost and burden estimates.

1. EPA expects that reporting health and safety information electronically would reduce the burden associated with current paper-based submission method under TSCA. EPA is seeking information that might further inform the Agency's burden estimates. Estimated costs presented by EPA for submitters (reporting burden) and the Agency (time required for manual processing of data) may overstate actual costs to the extent that submitters are able to use the electronic submission tool. EPA invites comment on the relative time and resource burden of completing CDX registration requirements and making an electronic submission, versus making a submission via the current paper-based method.

2. EPA seeks comment on its belief that persons required to report information under TSCA section 4 or 8(d) rules, or under the TSCA 8(a) PAIR would benefit from moving from paper based reporting to electronic because it is less expensive, faster, and easier.

3. CISS enables submitters to send CBI electronically. EPA invites comments on the submission of CBI information via CDX. The Agency is requesting submitters use a Portable Document Format (PDF) to send documents to the Agency. Would this be an acceptable format for submitters to send CBI to the Agency or is there another format submitters would prefer?

4. EPA is also considering using CDX to send correspondence relating to submissions under TSCA sections 4 and 8(d) rules. EPA invites comments on whether persons required to report under these sections of TSCA would benefit from receiving electronic correspondence from EPA via CDX.

5. CISS allows submitters to provide some information to EPA in fielded formats, such as the chemical identity, while also allowing submitters to upload files as attachments to a web-based form. EPA invites comments on the submission of forms, reports, and other documents in fielded formats. Would it be feasible for submitters to enter data and information in a fielded format, e.g., the Organisation for Economic Co-operation and Development (OECD) harmonized template formats? The OECD harmonized template formats are available online at: *http://www.oecd.org/document/18/0,3746,en_21571361_43392827_44169746_1_1_1_1,00.html.*

VI. References

As indicated under **ADDRESSES**, a docket has been established for this proposed rule under docket ID number EPA–HQ–OPPT–2011–0519. The following is a listing of the documents that are specifically referenced in this action. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. TSCA Section 5 Premanufacture and Significant New Use Notification Electronic Reporting; Revisions to Notification Regulations; Final Rule. **Federal Register** (75 FR 773, January 6, 2010) (FRL–8794–5).
2. EPA. Cross-Media Electronic Reporting; Final Rule. **Federal Register** (70 FR 59848, October 13, 2005) (FRL–7977–1).
3. EPA. TSCA Inventory Update Reporting Rule; Electronic Reporting; Direct Final Rule. **Federal Register** (71 FR 52494, September 6, 2006) (FRL–7752–8).
4. EPA. Inventory Update Reporting Modification; Chemical Data Reporting; Final Rule. **Federal Register** (76 FR 50816, August 16, 2011) (FRL–8872–9).
5. Transfer of Records to the National Archives of the United States. 36 CFR part 1235.
6. EPA. Electronic Toxic Control Act (eTSCA)/e-PMN Reporting Tool User's Guide.
7. EPA. Economic Analysis for Electronic Reporting under TSCA Section 4, Section 5 NOCs, Section 8(a) PAIR, and Section 8(d). February 21, 2012.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), and is therefore not subject to review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563, entitled ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011). EPA has prepared an economic analysis of this action, which is contained in a document entitled ''Economic Analysis for Electronic Reporting under TSCA Section 4, Section 5 NOCs, Section 8(a) PAIR, and Section 8(d)'' (Ref. 7). A copy of the economic analysis is available in the docket for this proposed rule and is summarized in Unit IV.

B. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted for OMB approval under PRA, 44 U.S.C. 3501 *et seq.* The ICR document prepared by EPA, identified under EPA ICR No. 2412.01 and OMB control number 2070–NEW, is available in the docket for the proposed rule. The ICR addresses the incremental changes to the five currently approved ICR documents that

cover the existing reporting and recordkeeping programs that are approved under OMB control numbers 2070–0004, 2070–0012, 2070–0033, 2070–0054, and 2070–0156. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The amended information collection activities contained in this proposed rule are designed to assist the Agency in meeting its responsibility under TSCA to receive, process, and review reports, data, and other information. As such, responses to the collection of information covered by this ICR would still be mandatory, but with the final rule, respondents would be required to use the CISS reporting tool, except for TSCA section 5 submissions, which would require the use of existing e-PMN software.

Burden is defined at 5 CFR 1320.3(b). The ICR document for this proposed rule provides a detailed presentation of the estimated burden and costs for the first year of the program. The rule-related burden and cost to chemical manufacturers, importers, and processors who would submit notices to the Agency for review is summarized here. The projected total burden to industry is 363 hours per year for the first year of the final rule. This includes an estimated average burden per response of 0.9 hours for CDX registration, 1.8 hours for requesting a CDX electronic signature, and 0.8 hours for final rule familiarization.

Any comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, should be submitted to the docket for this proposed rule, under docket ID number EPA–HQ–OPPT–2011–0519. You may also submit a copy of your comments on the ICR to OMB. See **ADDRESSES** for submission of comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 17, 2012, a comment to OMB is best assured of having its full effect if OMB receives it by May 17, 2012. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* the Agency hereby certifies that this proposed rule, if promulgated as proposed, would not have a significant adverse economic impact on a substantial number of small entities.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise, which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant adverse economic impact on a substantial number of small entities, an agency may certify that a rule will not have a significant adverse economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This proposed rule is expected to reduce the existing regulatory burden. The factual basis for the Agency's certification is presented in the small entity impact analysis prepared as part of the Economic Analysis for this proposed rule, and is briefly summarized in Unit IV. EPA analyzed reporting data that identified individual companies submitting information under TSCA sections 4, 5, 8(a) PAIR, or 8(d) and identified those companies potentially affected by this proposed rule that qualify for the small business status. EPA estimated the cost impact ratios for small parent entities potentially affected by this proposed rule and has determined that the estimated regulatory costs represent a small impact of less than 1% of their annual revenue. The estimated ratios range from less than 0.0001% to 0.014%, depending on the NAICS sector and employment size category, with an average of 0.001%. No small parent entities are expected to have a cost impact of greater than 1% of annual revenue. Since the estimated regulatory costs represent a small fraction of a typical parent entity's revenue (i.e., less than 1%), the impacts of this proposed rule are likely to be minimal.

D. Unfunded Mandates Reform Act

State, local, and tribal governments have not been affected by the TSCA sections 4, 5, 8(a) PAIR, and 8(d) reporting requirements, and EPA does not have any reason to believe that any State, local, or tribal government would be affected by this proposed rule. Therefore, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

E. Executive Order 13132

Under Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule would not have federalism implications because the proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. This proposed rule would establish electronic notification requirements that apply to manufacturers (including importers) and processors of certain chemicals. This proposed rule would not apply directly to States and localities and would not affect State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175

Under Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), EPA has determined that this proposed rule would not have tribal implications because it would not have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in the Executive Order. EPA has no information to indicate that any tribal government manufactures or imports the chemical substances covered by this action. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045

This proposed rule would not require special consideration pursuant to the terms of Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997),

because this action is not an economically significant action as defined by EO 12866, nor does EPA expect the environmental health or safety risks addressed by this action to present a disproportionate risk to children.

H. Executive Order 13211

This proposed 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), because this proposal is not an economically significant action as defined by EO 12866, nor would it have any significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. This action is not expected to impose technical standards, and whether an available and applicable voluntary consensus standard needs to be evaluated.

J. Executive Order 12898

This proposed rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities that require special consideration by the Agency under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). This document proposes to establish procedures for satisfying existing regulatory requirements through electronic reporting. It would not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Parts 712, 716, 720, 721, 723, 725, 766, 790, 799

Environmental protection, Administrative practice and procedure, Business and industry, Chemicals, Reporting and recordkeeping.

Dated: March 30, 2012.

Louise P. Wise,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 712—[AMENDED]

1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. In § 712.3, add new paragraphs (q) and (r) to read as follows:

§ 712.3 Definitions.

* * * * *

(q) *Central Data Exchange* or *CDX* means EPA's centralized electronic document receiving system, or its successors.

(r) *Chemical Information Submission System* or *CISS* means EPA's electronic, web-based reporting tool for the completion and submission of data, reports, and other information associated with TSCA sections 4 and 8.

3. In § 712.28, revise paragraphs (c) and (d) and add new paragraph (e) to read as follows:

§ 712.28 Form and instructions.

* * * * *

(c) *Information to be reported.* Persons authorized to report information under this subpart must include the following information on Form 7710–35, Manufacturer's Report—Preliminary Assessment Information (Manufacturer's Report):

(1) A technical certification statement signed and dated by an authorized person located at the plant site or corporate headquarters of the respondent company.

(2) A confidentiality statement signed and dated by an authorized person located at the plant site or corporate headquarters of the respondent company.

(3) The specific chemical name and Chemical Abstracts Service (CAS) Registry Number listed in 40 CFR 712.30.

(4) The name, company, address, city, State, ZIP code, and telephone number of a person who is submitting the form, which may be a person located at a plant site or corporate headquarters that will serve as the respondent, and will be able to answer questions about the information submitted by the company to EPA. A respondent to this subpart must include the appropriate Dun and Bradstreet Number for each plant site reported.

(5) The plant site activities, such as the manufacturing of a chemical substance, including the total quantity of the chemical substance (in kilograms) imported in bulk during the reporting period.

(6) The total number of workers and total worker-hours in each process category, which includes enclosed process, controlled release process, and open process.

(7) The information related to chemical substance processing by customers, including customers' use in industrial and consumer products, the market names under which the chemical substance is manufactured or imported, and the customer's process categories that are sold to customers for further processing.

(d) Persons must use CISS to complete and submit Form 7710–35, Manufacturer's Report, (40 CFR part 712, subpart B) and accompanying letters, via CDX. Submission requires registration with CDX, and must be made only as set forth in this section.

(e) To access CISS go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions go to *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

4. In § 712.30, revise paragraphs (a)(3)(i), (a)(3)(ii), and (c)(2) to read as follows:

§ 712.30 Chemical lists and reporting periods.

(a) * * *

(3) * * *

(i)(A) The respondent has previously and voluntarily provided EPA with a Manufacturer's Report on a chemical substance or mixture subject to subpart B of this part, which contains data for a 1-year period ending no more than 3 years prior to the effective date described in paragraph (a)(2) of this section. Respondents meeting this condition must notify EPA by letter of their desire to have the voluntary submission used in lieu of a current data submission and must verify the completeness and current accuracy of the voluntarily submitted data. Such letters, sent in accordance with the method specified in § 712.28(d) to EPA, must contain the following language:

> I hereby certify that, to the best of my knowledge and belief, all information entered on this form is complete and accurate. I agree to permit access to, and the copying of records by, a duly authorized representative of the EPA Administrator, in accordance with the Toxic Substances Control Act, to document any information reported on the form.

(B) Notification letters must be submitted in accordance with the

method specified in § 712.28(d) prior to the reporting deadline.

(ii) The respondent has previously submitted a Manufacturer's Report on a chemical substance or mixture subject to subpart B of this part to the Interagency Testing Committee, but not to EPA, and that Manufacturer's Report contained data for a 1-year period ending less than 3 years prior to the effective date described in paragraph (a)(2) of this section. Respondents meeting this condition must submit a copy of the Manufacture's Report, in accordance with the method specified in § 712.28(d) to EPA, and must submit an accompanying letter, also in accordance with the methods specified in § 712.28(d), notifying EPA of the respondent's intent that the submission be used in lieu of a current Manufacturer's Report. The notification letter must verify the completeness and current accuracy of the voluntarily submitted data.

* * * * *

(c) * * *

(2) You must submit the information using the method specified in § 712.28(d).

* * * * *

PART 716—[AMENDED]

5. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

6. In § 716.3, add the following definitions in alphabetical order to read as follows:

§ 716.3 Definitions.

* * * * *

Central Data Exchange or *CDX* means EPA's centralized electronic document receiving system, or its successors.

Chemical Information Submission System or *CISS* means EPA's electronic, web-based tool for the completion and submission of data, reports, and other information.

* * * * *

7. In § 716.30, revise paragraph (c) and add new paragraph (d) to read as follows:

§ 716.30 Submission of copies of studies.

* * * * *

(c) Persons must use CISS to complete and submit all data, reports, and other information required by 40 CFR part 716, via CDX. Submission requires registration with CDX, and must be made only as set forth in this section.

(d) To access CISS go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

8. In § 716.35, revise paragraph (c) and add new paragraph (d) to read as follows:

§ 716.35 Submission of lists of studies.

* * * * *

(c) Persons must use CISS to complete and submit all data, reports, and other information required by 40 CFR part 716, via CDX. Submission requires registration with CDX, and must be made only as set forth in this section.

(d) To access CISS go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

9. In § 716.40, revise the introductory text of the section to read as follows:

§ 716.40 EPA requests for submission of further information.

EPA may request a person to submit or make available for review the following information after the initial reporting under §§ 716.30 and 716.35. If the requested submissions are not made, EPA may subpoena them under TSCA section 11, 15 U.S.C. 2610.

* * * * *

10. In § 716.55, revise paragraph (b)(3) to read as follows:

§ 716.55 Confidentiality claims.

* * * * *

(b) * * *

(3) Failure to furnish a second copy when information is claimed as confidential in the first copy will be considered a presumptive waiver of the claim of confidentiality. EPA will notify the respondent that a finding of a presumptive waiver of the claim of confidentiality has been made. The respondent will be given 30 days from the date of his or her receipt of this notification to submit the required second copy. If the respondent fails to submit the second copy within the 30 days, EPA will place the first copy in the public docket.

* * * * *

11. In § 716.60, revise paragraphs (a), (b)(2), (c), and (d), and add new paragraph (e) to read as follows:

§ 716.60 Reporting schedule.

(a) *General requirements.* Except as provided in § 716.5 and paragraphs (b) and (c) of this section, submissions under §§ 716.30 and 716.35 must be submitted using the electronic method specified in §§ 716.30(c) and 716.35(d), on or before 60 days after the effective date of the listing of a substance or mixture in § 716.120 or within 60 days of proposing to manufacture (including import) or process a listed substance or listed mixture (including as a known byproduct) if first done after the effective date of the substance or mixture being listed in § 716.120.

(b) * * *

(2) *Submission of copies of completed studies.* Persons must submit studies listed as ongoing or initiated under § 716.35(a)(1) and (a)(2) within 30 days of completing the study, using the method specified in §§ 716.30(c) and 716.35(c).

(c) *Requests for extensions of time.* Respondents who cannot meet a deadline under this section may apply for a reasonable extension of time. Respondents may request an extension under this section. Extension requests must be submitted on or before 40 days after the effective date of the listing of a substance or mixture in § 716.120, using the electronic method specified in §§ 716.30(c) and 716.35(c). EPA's Director of the Office of Pollution Prevention and Toxics will grant or deny extension requests.

(d) *Submission methods.* Persons must use CISS to complete and submit all data, reports, and other information required by 40 CFR part 716, via CDX. Submission requires registration with CDX, and must be made only as set forth in this section.

(e) To access CISS go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

12. In § 716.105, revise paragraph (d) and add new paragraph (e) to read as follows:

§ 716.105 Additions of substances and mixtures to which this subpart applies.

* * * * *

(d) Persons who wish to submit information that shows why a substance should be withdrawn must submit their comments by using CISS to complete and submit all data, reports, and other information required by 40 CFR part 716, via CDX. Submission requires registration with CDX, and must be made only as set forth in this section.

(e) To access CISS go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

PART 720—[AMENDED]

13. The authority citation for part 720 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2613.

14. In § 720.40:

i. Remove paragraphs (a)(2)(i) and (a)(2)(ii).

ii. Redesignate paragraphs (a)(2)(iii) and (a)(2)(iv) as paragraphs (a)(2)(i) and (a)(2)(ii).

iii. Revise newly redesignated paragraph (a)(2)(i).

iv. Revise paragraph (c).

The amendments read as follows:

§ 720.40 General.

(a) * * *

(2) * * *

(i) *Submission via CDX.* TSCA section 5 notices and any related support documents must be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such notices must be generated and completed on EPA Form 7710–25 using e-PMN software. To obtain a version of e-PMN software that contains an encryption module you must register with CDX. A version without encryption may be downloaded without registering with CDX.

* * * * *

(c) *Where to submit a notice or support documents.* For submitting notices or support documents via CDX, use the e-PMN software.

* * * * *

15. In § 720.75, revise paragraphs (b)(2) and (e)(1) to read as follows:

§ 720.75 Notice review period.

* * * * *

(b) * * *

(2) A request for suspension may only be submitted in a manner set forth in this paragraph. The request for suspension also may be made orally, including by telephone, to the submitter's EPA contact for that notice, subject to paragraph (b)(3) of this section. Requests for suspension may be submitted electronically to EPA via CDX. Such requests must be generated and completed using e-PMN software. See § 720.40(a)(2)(iv) for information on how to obtain e-PMN software.

* * * * *

(e) *Withdrawal of a notice by the submitter.* (1)(i) A submitter may withdraw a notice during the notice review period by submitting a statement of withdrawal in a manner set forth in this paragraph. The withdrawal is effective upon receipt by EPA of the CDX submission.

(ii) *Submission of withdrawal notices.* EPA will accept statements of withdrawal only if submitted in accordance with this paragraph. Statements of withdrawal must be generated, completed, and submitted to EPA (via CDX) using e-PMN software. See § 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

* * * * *

16. In § 720.102.

i. Remove paragraph (d)(1).

ii. Designate the introductory text of paragraph (d) as paragraph (d)(1).

iii. Revise paragraph (d)(2).

The amendments read as follows:

§ 720.102 Notice of commencement of manufacture or import.

* * * * *

(d) * * *

(2) *Submission of notice of commencement.* EPA will accept notices of commencement only if submitted in accordance with this paragraph. All notices of commencement must be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such notices of commencement must be generated and completed using e-PMN software. See § 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

PART 721—[AMENDED]

17. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

18. In § 721.30, revise paragraph (b) introductory text to read as follows:

§ 721.30 EPA approval of alternative control measures.

* * * * *

(b) Persons submitting a request for a determination of equivalency to EPA under this part must submit the request to EPA via CDX using e-PMN software in the manner set forth in 40 CFR 720.40(a)(2)(i). See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software. Support documents related to these requests must be submitted in the manner set forth in 40 CFR 720.40(c). A request for a determination of equivalency must contain:

* * * * *

19. In § 721.185, revise paragraph (b)(1) to read as follows:

§ 721.185 Limitation or revocation of certain notification requirements.

* * * * *

(b) * * *

(1) Any affected person may request modification or revocation of significant new use notification requirements for a chemical substance that has been added to subpart E of this part using the procedures described in §§ 721.160 or 721.170 by submitting a request that is accompanied by information sufficient to support the request. Persons submitting a request to EPA under this part must submit the request to EPA using e-PMN software in the manner set forth in 40 CFR 720.40(a)(2)(i). See 40 CFR 720.40(a)(2)(ii) for information on how to obtain the e-PMN software. Support documents related to these requests must also be submitted to EPA in the manner set forth in 40 CFR 720.40(c).

* * * * *

PART 723—[AMENDED]

20. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604.

21. In § 723.50, revise paragraph (e)(1) to read as follows:

§ 723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures.

* * * * *

(e) * * *

(1) A manufacturer applying for an exemption under either paragraph (c)(1) or (c)(2) of this section must submit an exemption notice to EPA at least 30 days before manufacture of the new chemical substance begins. Exemption notices and modifications must be submitted to EPA on EPA Form No. 7710–25 via CDX using e-PMN software in the manner set forth in this paragraph. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software. Notices and any related support documents, must be generated and completed (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

* * * * *

PART 725—[AMENDED]

22. The authority citation for part 725 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625.

23. In § 725.25, revise paragraph (c) to read as follows:

§ 725.25 General administrative requirements.

* * * * *

(c) *Where to submit information under this part.* MCANs and exemption requests, and any support documents related to these submissions, may only

be submitted in a manner set forth in this paragraph. MCANs and exemption requests, and any related support documents, must be generated, completed, and submitted to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

* * * * *

24. In § 725.54, revise paragraphs (b) and (d) to read as follows:

§ 725.54 Suspension of the review period.

* * * * *

(b)(1) *Request for suspension.* A request for suspension may only be submitted in a manner set forth in this paragraph. The request for suspension also may be made orally, including by telephone, to the submitter's EPA contact for that notice, subject to paragraph (c) of this section.

(2) *Submission of suspension notices.* EPA will accept requests for suspension only if submitted in accordance with this paragraph. Requests for suspension, must be generated, completed, and submitted to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

* * * * *

(d) If the submitter has not made a previous oral request, the running of the notice review period is suspended as of the date of receipt of the CDX submission by EPA.

25. In § 725.60, revise paragraph (a) to read as follows:

§ 725.60 Withdrawal of submission by the submitter.

(a)(1) *Withdrawal of notice by the submitter.* A submitter may withdraw a notice during the notice review period by submitting a statement of withdrawal in a manner set forth in this paragraph. The withdrawal is effective upon receipt of the CDX submission by EPA.

(2) *Submission of withdrawal notices.* EPA will accept statements of withdrawal only if submitted in accordance with this paragraph. Statements of withdrawal must be generated, completed, and submitted to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

* * * * *

26. In § 725.190, revise paragraph (d) to read as follows:

§ 725.190 Notice of commencement of manufacture or import.

* * * * *

(d) *How to submit.* All notices of commencement must be generated, completed, and submitted to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

27. In § 725.975, revise paragraph (b) introductory text to read as follows:

§ 725.975 EPA approval of alternative control measures.

* * * * *

(b) Persons submitting a request for a determination of equivalency to EPA under this part must submit the request to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software. Support documents related to these requests must also be submitted to EPA via CDX using e-PMN software. A request for a determination of equivalency must contain:

* * * * *

28. In § 725.984, revise paragraph (b)(1) to read as follows:

§ 725.984 Modification or revocation of certain notification requirements.

* * * * *

(b) * * *

(1) Any affected person may request modification or revocation of significant new use notification requirements for a microorganism that has been added to subpart M of this part using the procedures described in § 725.980. The request must be accompanied by information sufficient to support the request. Persons submitting a request to EPA under this part must submit the request to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software. Support documents related to these requests must also be submitted to EPA via CDX using e-PMN software.

* * * * *

PART 766—[AMENDED]

29. The authority citation for part 766 continues to read as follows:

Authority: 15 U.S.C. 2603 and 2607.

30. In § 766.3, add the following definitions in alphabetical order to read as follows:

§ 766.3 Definitions.

* * * * *

Central Data Exchange or *CDX* means EPA's centralized electronic document receiving system, or its successors.

Chemical Information Submission System or *CISS* means EPA's electronic, web-based reporting tool for the completion and submission of data, reports, and other information.

* * * * *

31. Revise § 766.7 to read as follows:

§ 766.7 Submission of information.

(a) All information (including letters of intent, protocols, data, forms, studies, and allegations) submitted to EPA under this part must bear the applicable Code of Federal Regulations (CFR) section number (e.g., § 766.20) and must be submitted using the method specified in paragraph (b) of this section.

(b) You must use CISS to complete and submit all data, reports, and other information required under this part.

(c) Submissions must be submitted to EPA via CDX.

(d) To access CISS go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions go to *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

PART 790—[AMENDED]

32. The authority citation for part 790 continues to read as follows:

Authority: 15 U.S.C. 2603.

33. In § 790.3, add the following definitions in alphabetical order to read as follows:

§ 790.3 Definitions.

* * * * *

Central Data Exchange or *CDX* means EPA's centralized electronic document receiving system, or its successors.

* * * * *

Chemical Information Submission System or *CISS* means EPA's electronic, web-based tool for the completion and submission of data, reports, and other information.

* * * * *

34. Revise § 790.5 to read as follows:

§ 790.5 Submission of information.

(a) All submissions and correspondence to EPA under this part must bear the Code of Federal Regulations (CFR) section number of the subject chemical test rule or, for the consent agreements.

(b) You must use CISS to complete and submit via CDX all data, reports, other information, and correspondence required by rules promulgated under TSCA section 4, and for correspondence pertaining to consent agreements as required under this part. The submissions must be made only as set forth in this section.

(c) To access CISS go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions go to *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

35. In § 790.45, revise paragraph (a) to read as follows:

§ 790.45 Submission of letter of intent to conduct testing or exemption application.

(a) No later than 30 days after the effective date of a test rule described in § 790.40, each person subject to that test rule and required to comply with the requirements of that test rule as provided in § 790.42(a) must, for each test required, send his or her notice of intent to conduct testing, or submit to EPA an application for exemption from testing by the method specified in § 790.5(b).

* * * * *

36. In § 790.48, revise paragraphs (a)(2), (a)(3), (b)(3), (b)(4), (b)(5), (c)(2), and (c)(3) to read as follows:

§ 790.48 Procedure if no one submits a letter of intent to conduct testing.

(a) * * *

(2) If no manufacturer subject to the test rule has notified EPA of its intent to conduct one or more of the required tests within 30 days after the effective date of the test rule described in § 790.40, EPA will notify all manufacturers, including those described in § 790.42(a)(4) and (a)(5), through CDX or by publishing a notice of this fact in the **Federal Register** specifying the tests for which no letter of intent has been submitted and will give such manufacturers an opportunity to take corrective action.

(3) If no manufacturer submits a letter of intent to conduct one or more of the required tests within 30 days after receipt of EPA's notification under paragraph (a)(2) of this section, all manufacturers subject to the test rule will be in violation of the test rule from the 31st day after receipt of the submission or publication of the **Federal Register** notice described in paragraph (a)(2) of this section.

(b) * * *

(3) No later than 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section, each person described in § 790.40(a)(4) and (a)(5) and each person processing the subject chemical as of the effective date of the test rule described in § 790.40 or by 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section must, for each test specified in the **Federal Register** notice, either notify EPA of his or her intent to conduct testing, or submit to EPA an application for an exemption from testing requirements for the test. Each such notification to conduct testing or application for exemption from testing must be submitted to EPA by the method specified in § 790.5(b).

(4) If no manufacturer or processor of the test chemical has submitted a letter of intent to conduct one or more of the required tests within 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section, EPA will notify all manufacturers and processors through CDX or publish a **Federal Register** notice of this fact specifying the tests for which no letter of intent has been submitted. The CDX notification or **Federal Register** notice will give the manufacturers and processors an opportunity to take corrective action.

(5) If no manufacturer or processor submits a letter of intent to EPA through CDX within 30 days after either receipt of the CDX notification from EPA under paragraph (b)(4) of this section, all manufacturers and processors subject to the test rule will be in violation of the test rule from the 31st day after receipt of such notification or publication of the **Federal Register** notice.

(c) * * *

(2) If no processor subject to the test rule has notified EPA through CDX of its intent to conduct one or more of the required tests within 30 days after the effective date of the test rule described in § 790.40, EPA will notify all the processors through CDX or publish a notice in the **Federal Register** of this fact, specifying the tests for which no letter of intent has been submitted and to give the processors an opportunity to take corrective action.

(3) If no processor submits a letter of intent through CDX to conduct one or more of the required tests within 30 days after receipt of the Agency's notification under paragraph (c)(2) of this section, all processors subject to the test rule will be in violation of the test rule from the 31st day after receipt of the CDX notification or publication of the **Federal Register** notice described in paragraph (c)(2) of this section.

37. In § 790.50, revise paragraphs (b)(1), (b)(3), and (e) to read as follows:

§ 790.50 Submission of study plans.

* * * * *

(b) * * *

(1) EPA may grant requests for additional time for the development of study plans on a case-by-case basis. Requests for additional time for study plan development must be submitted to EPA by the method specified in § 790.5(b). Any extension request must state why EPA should grant the extension.

* * * * *

(3) EPA will notify the submitter of EPA's decision to grant or deny an extension request through CDX.

* * * * *

(e) *Amendments to study plans.* Test sponsors must submit all amendments by the method specified in § 790.5(b).

38. In § 790.55, revise paragraphs (a) and (b)(2) to read as follows:

§ 790.55 Modification of test standards or schedules during conduct of test.

(a) *Application.* Any test sponsor who wishes to modify the test schedule for the mandatory testing conditions or requirements (i.e., ''shall statements'') in the test standard for any test required by a test rule must submit an application in accordance with this paragraph. Application for modification must be made by the method specified in § 790.5(b). Applications must include an appropriate explanation and rationale for the modification. Where a test sponsor requests EPA to provide guidance or to clarify a non-mandatory testing requirement (i.e., ''should statements'') in a test standard, the test sponsor must submit these requests to EPA by the method format specified in § 790.5(b).

(b) * * *

(2) Where, in EPA's judgment, the requested modification of the test standard or schedule would not alter the scope of the test or significantly change the schedule for completing the test, EPA will not ask for public comment before approving the modification. EPA will notify the test sponsor of EPA's decision via CDX. EPA will place copies of each application and EPA approval notification in the docket for the test rule in question. EPA will publish a notice annually in the **Federal Register** indicating the test standards or schedules for tests required in test rules which have been modified under this paragraph (b)(2) and describing the nature of the modifications. Until the **Federal Register** notice is published, any modification approved by EPA under paragraph (b)(2) of this section shall apply only to the test sponsor who applied for the modification under paragraph (a) of this section.

* * * * *

39. In § 790.62, revise paragraph (c)(4) to read as follows:

§ 790.62 Submission of study plans and conduct of testing.

* * * * *

(c) * * *

(4) The test sponsor shall submit any amendments to study plans to EPA using the method specified in § 790.5(b).

* * * * *

40. In § 790.68, revise paragraphs (b)(1) and (b)(2)(ii) to read as follows:

§ 790.68 Modification of consent agreements.

* * * * *

(b) * * *

(1) Any test sponsor who wishes to modify the test schedule for any test required under a consent agreement must submit an application in accordance with this paragraph. Application for modification must be made using the method specified in § 790.5(b). Applications must include an appropriate explanation and rationale for the modification. EPA will consider only those applications that request modifications to mandatory testing conditions or requirements (''shall statements'' in the consent agreement). Where a test sponsor requests EPA to provide guidance or to clarify a non-mandatory testing requirement (i.e., ''should statements''), the test sponsor shall submit these requests to EPA using the method specified in § 790.5(b).

(2) * * *

(ii) Where, in EPA's judgment, the requested modification of a test standard or schedule would not alter the scope of the test or significantly change the schedule for completing the test, EPA will not ask for public comment before approving the modification. EPA will notify the test sponsor and any other persons who have signed the consent agreement through CDX of EPA's approval. EPA will place copies of each application and EPA approval notification in the docket maintained for the consent agreement in question. EPA will publish a notice annually in the **Federal Register** indicating the test standards or schedules for test required in consent agreements which have been modified under paragraph (b)(2)(ii) of this section and describing the nature of the modifications.

* * * * *

41. In § 790.87, revise paragraphs (b)(2)(i), (b)(2)(ii), and (c) to read as follows:

§ 790.87 Approval of exemption applications.

* * * * *

(b) * * *

(2) * * *

(i) If EPA finds an equivalence claim to be in error or inadequately supported, the applicant will be notified through CDX. The applicant will be given 15 days to provide clarifying information.

(ii) Exemption applicants will be notified through CDX that equivalence has been accepted or rejected.

(c)(1) EPA will give exemption applicants final notice that they have received a conditional exemption through one of the following ways:

(i) A final Phase II test rule that adopts the study plans in a two-phase rulemaking.

(ii) A separate **Federal Register** notice in a single-phase rulemaking.

(iii) CDX.

(2) All conditional exemptions thus granted are contingent upon the test sponsors' successful completion of testing according to the specifications of the test rule.

42. In § 790.88, revise paragraph (b) to read as follows:

§ 790.88 Denial of exemption application.

* * * * *

(b) EPA will notify the exemption applicant through CDX or by a **Federal Register** notice of EPA's determination that the exemption application is denied.

43. In § 790.90, revise paragraph (c)(2) to read as follows:

§ 790.90 Appeal of denial of exemption application.

* * * * *

(c) * * *

(2) Hearing requests must be submitted using the method specified in § 790.5(b) and be received by EPA within 30 days of receipt of the Agency's notification under § 790.88(b). Hearing requests must provide reasons why a hearing is necessary.

* * * * *

44. In § 790.93, revise paragraphs (b), (c), (d)(2), and (e) to read as follows:

§ 790.93 Termination of conditional exemption.

* * * * *

(b) If EPA determines that one or more of the criteria listed in paragraph (a) of this section has been met, EPA will notify each holder of an affected conditional exemption through CDX or a **Federal Register** notice of EPA's intent to terminate that conditional exemption.

(c) Within 30 days after receipt of notification under paragraph (b) of this section that EPA intends to terminate a conditional exemption, the exemption holder may submit information using the method specified in § 790.5(b) either to rebut EPA's preliminary decision or notify EPA of its intent to conduct the required test pursuant to the test standard established in the test rule. Such a letter of intent shall contain all of the information required by § 790.45(c).

(d) * * *

(2) Hearing requests must be submitted using the method specified in § 790.5(b) and must be received by EPA within 30 days after receipt of the CDX notification or after publication of a notice in the **Federal Register** as described in paragraph (b) of this section.

(e) EPA will notify the exemption holder through CDX or by **Federal Register** notice of EPA's final decision concerning termination of conditional exemptions and will give instructions as to what actions the former exemption holder must take to avoid being found in violation of the test rule.

45. In § 790.97, revise paragraphs (a) and (c) to read as follows:

§ 790.97 Hearing procedures.

(a) Hearing requests must be submitted using the method specified in § 790.5(b). Such requests must include the applicant's basis for appealing EPA's decision.

* * * * *

(c) EPA will notify each applicant of EPA's decision through CDX within 60 days after the hearing.

PART 799—[AMENDED]

46. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, and 2625.

47. Revise § 799.5 to read as follows:

§ 799.5 Submission of information.

(a) Information (e.g., letters, study plans, or reports) submitted to EPA must be submitted using the method specified in paragraph (b) of this section. All information submitted under this part must bear the Code of Federal Regulations (CFR) section number of the subject chemical test rule (e.g., § 799.1053 for trichlorobenzenes).

(b) You must use CISS to complete and submit all data, reports, and other information required under this part. Submissions must be submitted to EPA via CDX.

(c) To access CISS go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

[FR Doc. 2012–8937 Filed 4–16–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 25, 27, and 101

[WT Docket No. 12–70; ET Docket No. 10–142; WT Docket No. 04–356; FCC 12–32]

Service Rules for Advanced Wireless Services in the 2000–2020 MHz and 2180–2200 MHz Bands, etc.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: In this document, the Commission proposes and/or seeks comments on service, technical, assignment, and licensing rules for flexible terrestrial use of spectrum currently assigned to the Mobile Satellite Service (MSS) in the 2 GHz band. These proposed rules are designed to increase the Nation's supply of spectrum for mobile broadband, provide for flexible use of this spectrum, encourage innovation and investment in mobile broadband, and provide a stable regulatory environment in which broadband deployment could develop. This proposal would carry out a recommendation in the *National Broadband Plan* that the Commission enable the provision of stand-alone terrestrial services in this spectrum. With this proceeding we intend to fulfill the Commission's previously stated plan to create a solid and lasting foundation for the provision of terrestrial services in the 2 GHz band. The Commission also seeks comment on an alternative band plan involving additional spectrum at 1695–1710 MHz that the National Telecommunications and Information Administration (NTIA) has proposed to reallocate from Federal to commercial use.

DATES: Submit comments on or before May 17, 2012. Submit reply comments on or before June 1, 2012. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, should be submitted on or before June 18, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. A copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167. You may submit comments, identified by FCC 12–32, or by WT Docket No. 12–70, ET Docket No. 10–142, WT Docket No. 04–356, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.
- *Availability of Documents:* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

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: Kevin Holmes of the Broadband Division, Wireless Telecommunications Bureau, at (202) 418–BITS. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking and Notice of Inquiry,* FCC 12–32, adopted and released on March 21, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via email at *fcc@bcpiweb.com*. The complete text is also available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachment/FCC-12-32A1doc.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via email to *bmillin@fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). All filings should reference the docket numbers in this proceeding, WT Docket No. 12–70, ET Docket No. 10–142, WT Docket No. 04–356.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.
  - *People With Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

- Document FCC 12–32 contains proposed information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Judith B. Herman at (202) 418–0214, or via the Internet at *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.
- To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.
- *Initial Paperwork Reduction Act Analysis:*
- This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.
- *OMB Control Number:* 3060–1030.
- *Title:* Service Rules for Advanced Wireless Services (AWS) in the 1.7 GHz and 2.1 GHz Bands.
- *Form Number:* N/A.
- *Type of Review:* Revision of a currently approved collection.
- *Respondents:* Business or other for-profit entities, and state, local, or tribal government.
- *Number of Respondents:* 979 respondents; 1,630 responses.
- *Estimated Time per Response:* 2 hours.
- *Frequency of Response:* Annual, semi-annual, one time, and on occasion reporting requirements; record keeping requirements; and 3rd party disclosure requirements.
- *Obligation to Respond:* Required to obtain or retain benefits.
- *Total Annual Burden:* 32,384 hours.
- *Total Annual Cost:* $581,800.
- *Privacy Impact Assessment:* N/A.
- *Nature and Extent of Confidentiality:* There is no need for confidentiality.
- *Needs and Uses:* The Commission will be submitting this proposed new or modified information collection to the Office of Management and Budget as a revision of a currently approved information collection under OMB Control Number 3060–1030. The Commission has not changed its recordkeeping and/or third party disclosure requirements; however, the Commission expects to revise its reporting requirements in this collection by increasing the total annual burden hours from 32,379 to 32,384 hours to accommodate 2000–2020 MHz and 2180–2200 MHz spectrum band (AWS–4) operators. There is no change in the total annual cost burden.
- The proposed new or modified information collection will be used by the Commission staff to review and determine whether an AWS–4 licensee satisfies the renewal criteria showing at the time of license renewal for AWS–4 operators, meets its performance requirements obligations, meets its discontinuance of service oblications, and satisfies its obligation to protect Mobile Satellite Services from harmful interference, pursuant to §§ 1.949, 27.14, 27.17, and 27.1136, respectfully, of the Commission's rules. Section 1.949 sets forth the renewal criteria showing at the time of license renewal; § 27.14 sets forth the construction requirements a licensee must meet in order to satisfy its performance requirements in their licensed area; § 27.17 sets forth the terms in which a licensee's authorization will terminate if it permanently discontinues its services; and § 27.1136 requires AWS–4 licensees to protect Mobile Satellite Service operations from harmful interference. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Summary

I. Introduction

1. In this *Notice of Proposed Rulemaking,* we propose to increase the Nation's supply of spectrum for mobile broadband by removing unnecessary barriers to flexible use of spectrum currently assigned to the Mobile Satellite Service (MSS) in the 2 GHz band. This proposal would carry out a recommendation in the *National Broadband Plan* that the Commission enable the provision of stand-alone terrestrial services in this spectrum. (Connecting America: The National Broadband Plan (2010) (*National Broadband Plan*), available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC–296935A1.pdf* (last visited Mar. 19, 2012)). We do so by proposing service, technical, assignment, and licensing rules for this spectrum. These proposed rules are designed to provide for flexible use of this spectrum, to encourage innovation and investment in mobile broadband, and to provide a stable regulatory environment in which broadband deployment could develop. Additionally, in our Notice of Inquiry, we seek comment on potential ways to free up additional valuable spectrum to address the Nation's growing demand for mobile broadband spectrum.

2. With this proceeding we intend to fulfill the Commission's previously stated plan to create a solid and lasting foundation for the provision of terrestrial services in 40 megahertz of spectrum in the 2 GHz band. As indicated in the *National Broadband Plan,* each MSS band is differently situated and therefore merits a band-specific approach to the expansion of terrestrial use. For example, the 2 GHz MSS band, unlike other MSS bands, has terrestrial Fixed and Mobile allocations and is comprised of large, contiguous blocks of spectrum. This *Notice of Proposed Rulemaking* directly follows on the *2 GHz Band Co-Allocation Order,* in which the Commission laid the predicate for full terrestrial use of the 2 GHz MSS band. *See Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz,* 76 FR 31252 (2011).

II. Notice of Proposed Rulemaking: AWS–4

3. In this *Notice of Proposed Rulemaking* (*AWS–4 Notice*), we build on the Commission's recent actions to enable the provision of terrestrial mobile broadband service in up to 40 megahertz of spectrum in the 2000–2020 MHz and 2180–2200 MHz spectrum bands. We propose terrestrial service rules for these spectrum bands that would generally follow the Commission's part 27 rules, modified as necessary to account for issues unique to the 2000–2020 MHz and 2180–2200 MHz spectrum bands. Given the proximity of these spectrum bands to spectrum bands previously identified as Advanced Wireless Services or AWS, in our proposal we refer to these spectrum bands as ''AWS–4'' or ''AWS–4 spectrum.'' We are mindful that this spectrum is now allocated on a co-primary basis for Mobile Satellite and for terrestrial Fixed and Mobile services and that MSS licensees already have authorizations to provide service in the band. Accordingly, as explained below, we seek comment on a proposal that AWS–4 terrestrial service rules will need to provide for the protection of 2 GHz MSS systems from harmful interference caused by AWS–4 systems. Finally, for each of the issues identified below, we seek comment on the most efficient manner to address the issue. If a party believes any of these issues would be more properly resolved in another Commission proceeding, we request that the party identify those issues and the relevant Commission proceeding.

4. In the sections that follow, we seek comment on a number of parameters governing the licensing, use, and assignment of the spectrum, including their costs and benefits. We ask that commenters take into account only those costs and benefits that directly result from the implementation of the particular rules that could be adopted, including any proposed requirement or potential alternative requirement. Commenters should identify the various costs and benefits associated with a particular proposal. Further, to the extent possible, commenters should provide specific data and information, such as actual or estimated dollar figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained, and any supporting documentation or other evidentiary support.

A. AWS–4 Band Plan

5. In this section, we make two overarching proposals to establish the AWS–4 band plan. First, we propose to pair the two AWS–4 spectrum bands. Second, we propose block sizes and a geographic area licensing scheme to define license boundaries.

1. Paired Spectrum (Uplink/Downlink)

6. The spectrum in the 2000–2020 MHz and 2180–2200 MHz bands is presently licensed as paired spectrum for mobile satellite use. The 2000–2020 MHz band serves as an uplink band and 2180–2200 MHz band serves as a downlink band. We propose to pair the AWS–4 blocks, consistent with the existing 2 GHz MSS licenses and the Commission's treatment of other bands used for mobile wireless and broadband service, AWS and PCS. We seek comment on this proposal. We also seek comment on whether we should take any action to ensure that equipment for the AWS–4 band is interoperable across both paired blocks.

7. Specifically, we propose to adopt the same uplink and downlink pairing designations for provision of terrestrial service as presently exists for satellite service in this spectrum: 2000–2020 MHz would serve as an uplink band; 2180–2200 MHz would serve as a downlink band. Adopting the same uplink/downlink pairing approach for AWS–4 as for 2 GHz MSS may facilitate the continued use of the existing satellites for MSS. We seek comment on the above proposals and proposed AWS–4 band plan. We also seek comment on two alternative possibilities, in which the uplink band would be shifted up 5 megahertz to 2005–2025 MHz or up 10 megahertz and compressed to 2010–2025 MHz, as discussed below.

2. Spectrum Block Size

8. We also propose to license the spectrum in paired 10-megahertz blocks for each license area. Currently, the 2 GHz MSS spectrum is assigned as two paired blocks: Block A pairs 2000–2010 MHz with 2190–2200 MHz and Block B pairs 2010–2020 MHz with 2180–2190 MHz. We observe, however, that the 3rd Generation Partnership Project (3GPP) standards organization is in the process of examining whether to change the duplex spacing for Band 23, which includes this spectrum, from a spacing that corresponds to the existing duplex spacing to one that would remove the variable duplex spacing. We seek comment on which pairing approach to apply. We ask commenters to discuss the affect the ongoing 3GPP process should have on our decision. In addition, commenters seeking alternative spectrum block sizes should support their recommendations with evidence that these alternative schemes will promote greater efficiency and more flexible use of the bands than the proposed approach. Commenters also should discuss and quantify any associated costs or benefits of implementing the proposals discussed above or any alternative schemes.

9. Our proposal to license AWS–4 spectrum in paired 10-megahertz blocks reflects several considerations. First, the MSS band is currently licensed as paired 10-megahertz blocks. Issuing AWS–4 licenses with equivalent bandwidth would facilitate coordination between the two services. Second, establishing paired 10-megahertz blocks strikes a balance between potentially enabling multiple licensees in any given geographical area (*i.e.,* different licensees in each 10 + 10 block pair) and allowing the use of newer high-bandwidth technologies. We seek comment on these approaches.

10. We also seek comment on adopting a flexible paired single block option that, in the event a single licensee holds both the A and B Blocks, would allow that entity to combine them into one paired 20-megahertz block and use these contiguous spectrum blocks seamlessly with flexibility to design its network and respond effectively to any business and technical needs. Alternatively, if we were to adopt a licensing mechanism that allows AWS–4 spectrum licensees to be held by entities other than the existing 2 GHz MSS licensees, we seek comment on whether this spectrum should be licensed in smaller block sizes.

3. Geographic Area Licensing

11. We propose to license the AWS–4 band using a geographic area licensing approach, and we seek comment on this proposal. A geographic licensing area approach is well suited for the types of fixed and mobile services that would likely be deployed in this band. Additionally, geographic licensing is consistent with the Commission's licensing approach adopted for the AWS–1 bands, and proposed for both the AWS–2 and the AWS–3 bands. In the event that interested parties do not support geographic licensing for the AWS–4 spectrum, those commenters should explain their position and identify the costs and benefits associated with an alternative licensing proposal and what type of licensing scheme it supports.

12. Assuming that we utilize a geographic area approach for licensing these bands, we must determine the appropriate size(s) of service areas on which licenses should be based. In previous AWS service rule proceedings the Commission has sought to balance policy goals of fostering service to rural areas and tribal lands, and promoting investment in and rapid deployment of new technologies and services consistent with its obligations under section 309(j) of the Communications Act. To do that, the Commission, among other things, established spectrum blocks in three geographic area sizes. In regard to the AWS–4 spectrum, however, we propose to apply a single size geographic area. We propose that any new AWS–4 licenses should be assigned on an Economic Area (EA) basis. *See* 47 CFR 27.6. Assigning AWS–4 in EA geographic areas would allow AWS–4 licensees to make adjustments to suit their individual needs. EA license areas are small enough to provide spectrum access opportunities for smaller carriers. EA license areas also nest within and may be aggregated up to larger license areas that have been used by the Commission for other services, such as Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) for those seeking to create larger service areas. Depending on the licensing mechanism we adopt, licensees may aggregate or otherwise adjust their geographic coverage through auction or through secondary markets. We seek comment on this approach. We ask commenters to discuss and quantify the economic, technical, and other public interest considerations of any particular geographic scheme for this particular band, as well as the impact that any such scheme would have on rural service and competition.

13. We also seek comment on including the Gulf of Mexico in our licensing scheme for these bands. We question whether to include it as part of larger service areas, as we did for the Upper 700 MHz band, or whether we should separately license a service area or service areas to cover the Gulf of Mexico. Commenters who advocate a separate service area or areas to cover the Gulf of Mexico should discuss what boundaries should be used, and whether special interference protection criteria or performance requirements are necessary due to the unique radio propagation characteristics and antenna siting challenges that exist for Gulf licensees.

B. Technical Issues

14. When the Commission adopted the MSS/ATC regime in 2003, it addressed intra-service and adjacent-band interference concerns, and enacted unique MSS/ATC technical rules in part 25 of the Commission's rules, which did not fully align with the technical rules for similar terrestrial operations in other bands. The ATC interference rules for the 2 GHz MSS band are contained in rule 25.252. *See* 47 CFR 25.252. Subsequently, in addressing requests for ATC authority by the two 2 GHz MSS authorization holders, ICO and TerreStar, the Commission granted them waivers of several of the part 25 ATC interference rules. *See* New ICO Satellite Services G.P. Application for Blanket Authority to operate Ancillary Terrestrial Component base stations and dual-mode MSS–ATC mobile terminals in the 2 GHz MSS Bands, DA 09–38, *Order and Authorization,* 24 FCC Rcd 171 (2009) (*ICO Waiver Order*). In general, these waivers resulted in aligning the terrestrial requirements for the 2 GHz MSS band operators more closely with the part 27 technical rules that apply to AWS–1 license holders. Based on review of current interference possibilities, we propose an approach that would permit deployment under the current rules and waivers by proposing that the technical rules and license conditions applicable today to the provision of terrestrial services in the 2 GHz MSS bands should generally apply to the AWS–4 bands.

15. In general, our aim in establishing technical rules is to maximize the flexible use of spectrum while appropriately protecting incumbent operations in neighboring bands. The technical rules we propose below are based on the rules for AWS–1 spectrum, with specific additions or modifications designed to protect broadband PCS services operating in the 1930–1995 MHz band, as well as future services operating in the 1995–2000 MHz band, from harmful interference from AWS–4 mobile devices operating in the 2000–2020 MHz band. Any rules would also address protection of Federal operations in the 2200–2290 MHz band from harmful interference from AWS–4 base stations operating in the 2180–2200 MHz band. We also seek comment on whether modifications to these rules might be warranted in order to provide for more flexible use of AWS–4 spectrum, while at the same time protecting other spectrum uses from interference.

1. OOBE Limits

16. In the proposed band plan, AWS–4 spectrum would be issued in paired 10-megahertz blocks, using Economic Area licenses. Therefore, interference must be considered between AWS–4 blocks and adjacent bands, between different blocks within the AWS–4 band, and between different geographic area licenses within the AWS–4 band.

a. Interference Between Adjacent Block AWS–4 Licensees

17. *Emissions limit.* To minimize harmful interference, the Commission's rules often limit the amount of RF power that may be emitted outside of the assigned block of an RF transmitter. The Commission has previously concluded that attenuating base station out-of-band emissions (OOBE) by $43+10*\log_{10}(P)$ dB at the edge of an assigned block, where P is the transmit power in watts, is appropriate to minimize harmful electromagnetic interference between terrestrial operations in the 2180–2190 MHz and 2190–2200 MHz blocks. Similarly, the Commission has previously found that attenuating terrestrial mobile emissions by $43+10*\log_{10}(P)$ dB outside the assigned block will minimize interference within the 2000–2020 MHz band. Furthermore, when the Commission created the service rules for AWS–1, it concluded that this level of attenuation is appropriate for protecting wireless systems that will operate in the AWS bands. *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands,* 69 FR 5711 (2003) (*AWS–1 Report and Order*). At the time, the Commission noted that this limit is commonly employed in other wireless services, and it has generally been found to be adequate in preventing adjacent channel interference. This level of attenuation is now established in the Commission's rules for the AWS band, both for both mobile station and base station emissions. This OOBE limit also applies in the broadband PCS band.

18. *Measurement procedure.* To fully define an emissions limit, the Commission's rules generally specify details of how to measure the power of the emissions, such as the measurement bandwidth. The part 25 ATC rules determine mobile station compliance with the OOBE limit based on a measurement bandwidth of 1 MHz or greater. For AWS–1, the measurement bandwidth used to determine compliance with this limit for both mobile stations and base stations is generally 1 MHz, with some modification within the first 1 MHz. Previously, the Commission concluded the AWS–1 measurement procedure was also appropriate for mobile stations operating in 2000–2020 MHz. At that time the Commission did not address the measurement procedure for base stations operating in 2180–2200 MHz.

However, as mentioned above, in the AWS–1 band this procedure applies to mobile and base transmissions. We believe that it is similarly reasonable to apply this procedure to both mobile and base transmissions in the AWS–4 band.

19. *Proposal.* To address potential harmful electromagnetic interference within the AWS–4 band, we propose that § 27.53(h) of the Commission's rules, which includes OOBE attenuation of $43+10*\log_{10}(P)$ dB and the associated measurement procedure, should be expanded to apply to AWS–4 operations in the 2000–2020 MHz and 2180–2200 MHz bands. We seek comment on this proposal. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternative approaches.

b. Interference With Services in Adjacent and Other Bands

20. After considering interference between adjacent blocks within the AWS–4 band in the previous section, we next examine the adjacent and nearly adjacent bands outside the AWS–4 band. In so doing, we seek to establish rules that permit flexible use of the AWS–4 band, while effectively protecting operations in adjacent bands from harmful interference. We begin our examination of adjacent band interference by considering whether attenuation greater than $43+10*\log_{10}(P)$ dB—a level the Commission frequently applies to adjacent band operations—is needed to prevent harmful electromagnetic interference from the AWS–4 band to other bands. Although the previous section only discussed $43+10*\log_{10}(P)$ for interference within the band, that attenuation applies to all transmissions outside the assigned block, including emissions in other bands.

21. *Interference with operations below 1995 MHz.* The AWS–4 uplink band at 2000–2020 MHz is 5 megahertz from the broadband PCS downlink band at 1930–1995 MHz. To protect PCS mobile receivers from harmful electromagnetic interference from mobile stations transmitting in the 2000–2020 MHz band, the ATC rules specify an attenuation of $70+10*\log_{10}(P)$ dB below 1995 MHz. We propose that this emission limit should continue to apply to terrestrial operations in the 2000–2020 MHz band, and that a rule should be added to part 27 that fixed and mobile transmitters operating in 2000–2020 MHz must attenuate emissions below 1995 MHz by $70+10*\log_{10}(P)$ dB. We further propose that this attenuation should be measured using the existing measurement procedure of § 27.53(h) discussed above. We seek comment on these proposals. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternative approaches.

22. *Interference with operations in 1995–2000 MHz.* The part 25 ATC technical rules also include a linear interpolation of OOBE attenuation between $70+10*\log_{10}(P)$ dB at 1995 MHz and $43+10*\log_{10}(P)$ dB at 2000 MHz. However, recently enacted legislation directs the Commission to allocate the 1995–2000 MHz band (AWS–2 Upper H block) for commercial use, and to auction and grant new initial licenses for the use of this spectrum under flexible-use service rules. Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, section 6401(b). Given this statutory directive and considering that the 1995–2000 MHz block is adjacent to existing broadband PCS downlink operations, it is likely that this block will be used for terrestrial downlink operations. This will exacerbate the existing potential for harmful interference between downlink operations below 2000 MHz and uplink operations above 2000 MHz. For example, commenters to the *2 GHz Public Notice* have suggested that a guard band of 5 MHz or more would be necessary to prevent interference between downlink operations in 1930–1995 MHz and uplink operations in 2000–2020 MHz. To address this apparent tension, we seek comment on three alternative proposals for OOBE limits in 1995–2000 MHz.

23. First, we could maintain the existing linear interpolation. However, this would offer the 1995–2000 MHz block less protection than the existing PCS blocks, which as discussed above is $70+10*\log_{10}(P)$ dB below the transmit power. In addition, meeting this limit may have a negative impact on mobile transmitters in 2000–2020 MHz, as the mobile station components, such as power amplifiers and filters, may not have sharp enough roll off characteristics to meet this limit when operating in the lower parts of the band, particularly when operating at the maximum power level supported. In this regard, we observe that, in standardizing the 2000–2020 MHz and 2180–2200 MHz bands as Band 23, 3GPP has allowed for up to 12 dB of additional power reduction below the maximum transmit power for mobile stations in 2000–2010 MHz to meet the Commission's current rules. As the mobile transmit power affects the ability of the mobile station to reach the base station, this reduction of power would appear to have a significant impact on cell coverage, uplink throughput, and ultimately the usability of this spectrum.

24. Second, we could require that fixed and mobile transmitters operating in 2000–2020 MHz attenuate emissions below 2000 MHz by $70+10*\log_{10}(P)$ dB, consistent with the emissions limit below 1995 MHz. We note, however, that this level may be difficult to meet for mobile transmitters in 2000–2020 MHz, as it requires even sharper roll off from mobile stations than the previous alternative.

25. Third, we could require that fixed and mobile transmitters operating in 2000–2020 MHz attenuate emissions below 2000 MHz by $43+10*\log_{10}(P)$ dB, symmetric with existing limits for PCS emissions in 2000–2020 MHz and broadly consistent with Commission rules as discussed above. In this case, if future service rules for 1995–2000 MHz have the same requirement, then the licensees above and below 2000 MHz would be placed on a more equal footing, and could determine among themselves if there is a need for any stricter limits.

26. We seek comment on each of these alternatives. For each alternative, we ask commenters to address whether the proposal is adequate to protect expected uses of the 1995–2000 MHz band. Commenters should address and quantify the magnitude and effect of any possible harmful interference, such as the impact on link budgets or coverage areas. Commenters should also address the amount of spectrum that may be unusable or partially usable in either band. For each alternative, we also seek comment on the impact on operations in the 2000–2020 MHz band, including whether mobile stations will be able to utilize the entire 2000–2020 MHz band while meeting the proposed limit, and if not, the amount of spectrum that may be unusable or usable only at a reduced power, as well as the extent of any such power reductions.

27. For all three alternatives, we propose that the attenuation should be measured using the existing measurement procedure of § 27.53(h) discussed above. We seek comment on this proposal.

28. Finally, in the event that the record shows none of these three proposals sufficiently addresses issues of interference with 1995–2000 MHz, we seek comment on two additional proposals. First, we seek comment on an alternative proposal to shift the uplink band up 5 megahertz from 2000–2020 MHz to 2005–2025 MHz, including the lower portion of the AWS–2 ''J'' Block at 2020–2025 MHz. This concept was part of Ericcson's proposal in its comments in response to the *2 GHz*

Public Notice. Would this shift proposal better mitigate interference with the AWS–2 H Upper block and PCS downlink bands, increasing the value of the spectrum for mobile broadband and other uses? Further, would this alternative approach allow for more productive use of the ''stranded'' lower portion of the AWS–2 J Block (2020–2025 MHz) should the Commission eventually decide to auction the upper portion of the J Block as part of an extended AWS–3 band? Second, we seek comment on an alternative proposal to shift the uplink band up 10 megahertz, while compressing the band from 20 to 15 megahertz, resulting in an uplink band of 2010–2025 MHz. For this alternative, in light of the interference issues that may impact the terrestrial use of 2000–2005 MHz, we seek comment on whether shifting the spectrum to a 15 megahertz band at 2010–2025 MHz would result in the actual loss of spectrum usable for terrestrial broadband service.

29. For both spectrum shift alternatives, we propose that the shift apply to the lower end of the band for both terrestrial and satellite service. Shifting the satellite service out of the 2000–2005 MHz or the 2000–2010 MHz blocks (in a manner consistent with the terrestrial service) would mitigate against the possibility of mobile satellite devices causing harmful interference into the 1995–2000 MHz block. The 2020–2025 MHz block is not presently allocated for satellite service. 47 CFR 2.106. We do not intend to shift the satellite service into this block. We seek comment on this proposal including its costs and benefits. Lastly, in considering the spectrum shift alternatives, we seek comment on how each might affect all of the applicable proposals contained in this *AWS–4 Notice,* including without limitation the technical protections discussed in this section, the assignment proposals, and relocation and cost sharing proposals discussed below.

30. *Interference with operations in 2020–2025 MHz.* The AWS–4 uplink band will be adjacent to the AWS–2 Lower J block, 2020–2025 MHz. Although the part 25 ATC rules adopted in 2003 originally attenuated the mobile station emissions in this range by a linear interpolation from $43+10*\log_{10}(P)$ dB at 2020 MHz to $70+10*\log_{10}(P)$ dB at 2025 MHz, the Commission separately proposed in 2004 to apply a standard of $43+10*\log_{10}(P)$ to the AWS–2 J block. Service Rules for Advanced Wireless Services in the 1915–1920 MHz, 1995–2000 MHz, 2175–2180 MHz and 1.7 GHz and 2.1 GHz Bands, 63 FR 63489 (2004). In 2009, in the *ICO Waiver Order,* the Commission waived the part 25 ATC rules and instead applied the $43+10*\log_{10}(P)$ to OOBE in 2020–2025 MHz from transmitters operating in 2000–2020 MHz. *See ICO Waiver Order.* We propose that no additional attenuation beyond $43+10*\log_{10}(P)$ dB is needed to protect services in the 2020–2025 MHz band. We seek comment on this approach. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternative approaches.

31. *Inference with operations above 2025 MHz.* The AWS–4 uplink band is 5 megahertz from the 2025–2110 MHz band, which includes broadcast auxiliary service (BAS) and cable television service (CARS) operations, as well as certain Federal government operations. Although the ATC rules originally limited the mobile emissions to $70+10*\log_{10}(P)$ above 2025 MHz, in 2009, the Commission waived the part 25 ATC rule and instead applied the $43+10*\log_{10}(P)$ standard. *See ICO Waiver Order.* As the interference potential between these bands has not changed significantly since then, we propose that no additional attenuation beyond $43+10*\log_{10}(P)$ dB is needed to protect operations above 2025 MHz. We seek comment on this approach. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternative approaches.

32. *Interference with operations below 2180 MHz.* The AWS–4 downlink band, 2180–2200 MHz, is adjacent to the AWS–2 Upper J block, 2175–2180 MHz, which is itself adjacent to the AWS–3 band, 2155–2175 MHz. The Commission has previously proposed that an attenuation of $43+10*\log_{10}(P)$ dB is an appropriate base station emission limit to prevent harmful electromagnetic interference in the AWS–2 and AWS–3 bands. *See, e.g.,* Service Rules for Advanced Wireless Services in the 1915–1920 MHz, 1995–2000 MHz, 2155–2175 MHz, and 2175–2180 MHz Bands, 73 FR 35995 (2008). As the circumstances have not changed significantly since that attenuation level was proposed, we propose that no additional attenuation beyond $43+10*\log_{10}(P)$ dB is needed below 2180 MHz. We seek comment on this approach. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternative approaches.

33. *Interference with opertions above 2200 MHz.* The proposed AWS–4 downlink band, 2180–2200 MHz, is adjacent to Federal operations in 2200–2290 MHz. Federal operations in the band 2200–2290 MHz consist mainly of space, airborne telemetry, and fixed point-to-point microwave radio relay communications. The space communications in the band consist of the tracking, telemetry, scientific data communications, and control of U.S. spacecraft. The band is used by these agencies to operate space research, space operations, and Earth exploration-satellites for space-to-Earth communications, and in the case of NASA for space-to-space communications through their Tracking and Data Relay Satellite System (TDRSS). Federal agencies use this band for research; law enforcement video surveillance; control of robotic systems for explosive neutralization and disposal; and the testing of robotic ground vehicles.

34. The Commission's part 25 ATC rules require strict emissions limitations (-100.6 dBW/4 kHz) in the 2180–2200 MHz band, and prohibit the location of base stations within 820 meters of a Federal earth station operating in the 2200–2290 MHz band. See 47 CFR 25.252(a)(1), (a)(6). In 2009, the Commission waived the part 25 emissions limit rule for MSS/ATC operator ICO, replacing it with the standard emission limit of $43+10*\log_{10}(P)$ dB. *See ICO Waiver Order.* Specific to emissions limits and restrictions on base station locations with respect to the 2200–2290 MHz band, the waiver order required that ICO follow an operator-to-operator agreement that ICO had reached with several Federal agencies. Letter from Karl B. Nebbia, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, to Julius Knapp, Chief, Office of Engineering and Technology, Federal Communications Commission, File No. SES–LIC–20071203–01646, SES–AMD–20080118–00075, SES–AMD–20080219–00172, Call Sign: E070272, Attachment at 2 (Jan. 6, 2009) (*ICO–Federal Agreement).* Finally, TerreStar also requested a waiver of the part 25 emission limit rules to the extent granted ICO, and is discussing an operator-to-operator agreement with Federal agencies. In summary, as it stands, ATC base stations in the 2190–2200 MHz block must meet -100.6 dBW/4 kHz in 2200–2290 MHz throughout the licensed areas, while ATC base stations in 2180–2190 MHz must meet the limits set forth in the *ICO–Federal Agreement.* If the Commission adopts the proposals contained in this *AWS–4 Notice,* we expect that licensees will construct extensive cellular systems in this band.

We seek comment on whether such deployments would represent a material change in the expected density of deployment in the band. If so, we seek comment on the advantages and disadvantages of such a change.

35. We seek comment on the appropriate emissions limits to protect Federal operations in the 2200–2290 MHz band in light of the current state of affairs. We observe that the emissions limit of −100.6 dBW/4 kHz EIRP is considerably more stringent than the standard OOBE limit of $43+10*\log_{10}(P)$ dB and may limit flexible use of the AWS–4 band. We seek comment on whether licensees would be able to use their entire spectrum block for commercial terrestrial broadband base stations while meeting this limit, or, if not, how much spectrum would be unusable or usable only at a reduced power level (that is, would effectively become a guard band), as well as the extent of any such power reductions. We also seek comment on whether current, state-of-the-art base station filter design would feasibly be able to meet the OOBE limit of -100.6 dBW/4 kHz in any portion of the 2200–2290 MHz band, and the practicality, including the costs, of commercially deploying such filters. We seek comment on whether any internal guard band would affect the band plan proposal made in the previous section that guard bands would have on the band plan proposal. Finally, we seek comment on whether to carry forward the existing waivers of the part 25 emissions limits into the part 27 regime (*e.g.,* pursuant to the Commission's license modification authority under section 316 of the Communications Act). Commenters should discuss the costs and benefits of their proposals.

36. We seek comment on whether to prohibit the location of AWS–4 base stations within 820 meters of existing Federal earth stations, consistent with both the current part 25 rule and the *ICO–Federal Agreement.* Commenters should discuss and quantify the costs and benefits of their proposals.

37. We also seek comment on whether there are any other part 25 MSS/ATC technical rules that we should incorporate into the AWS–4 technical rules.

38. *Other alternative approaches.* We also seek comment on any other alternative approaches to protecting Federal stations above 2200 MHz while maximizing the usability of AWS–4 spectrum. Commenters should discuss and quantify the costs and benefits of any proposed alternative approaches.

39. *PFD limits for protection of operations above 2200 MHz.* We seek comment on an alternative approach of specifying an aggregate power flux density (PFD) that must be met at the protected site, which would enable the AWS–4 licensee to operate as long as this limit is met. We seek comment on what PFD limit will prevent harmful interference, what methods can be used to determine that such a limit is met (*e.g.,* engineering studies), and the degree to which this approach would increase flexibility in the AWS–4 band while protecting Federal operations in the 2200 MHz band.

40. *Sliding scale for protection of operations above 2200 MHz.* The emissions limit in the *ICO–Federal Agreement* changes from an emissions limit of $43+10*\log_{10}(P)$ dB of attenuation of the transmit power beyond a specified distance from the protected site to an EIRP limit of −100.6 dBW/4 kHz within the specified distance. However, the attenuation needed and therefore the necessary emissions limit is a function of the isolation provided by the geographic separation of the protected site and the terrestrial base station, and therefore follows a curve as a function of the distance from the protected site. Therefore, we seek comment on an alternative approach where the OOBE limit is an interpolation between $43+10*\log_{10}(P)$ dB and −100.6 dBW/4 kHz as a function of distance. In this case it may be necessary for the interpolation to be linear in the logarithm of the distance.

41. *Global Positioning System (GPS).* We note that the MSS/ATC rules contain provisions regarding interference with GPS systems operating at 1559–1610 MHz. *See* 47 CFR 252(a)(7), (b)(3). We further note that different MSS/ATC bands are differently situated in terms of frequency separation from the GPS band. We request comment on whether any special interference rules protecting GPS are warranted for the 2 GHz band if we implement the AWS–4 proposals. We ask that commenters provide technical analysis supporting their views. We also seek comment on the costs and benefits associated with their proposals.

2. Receiver Performance

42. We invite comment on any potential for receiver overload interference between AWS–4 operations and operations above 2200 MHz, below 2180 MHz, above 2020 MHz, and below 2000 MHz. If such a risk exists, we request that parties provide whatever information may be available about the characteristics of the receivers operating in these frequencies, potential solutions to overload interference, and an assessment of the impact this might have on deployment of AWS–4 service. We also invite comment on any other receiver issues that should be considered in this proceeding that could affect the potential for harmful interference and usability of the AWS–4 spectrum.

3. Power Limits

43. We seek comment on appropriate power limits for terrestrial operations in the AWS–4 band. Specifically, as described below, we propose to apply existing AWS power limits to the AWS–4 band. We seek comment on this proposal, including the costs and benefits of the proposal.

44. *Base stations.* The MSS/ATC rules limit ATC base station transmit power to 27 dBW EIRP in 1.23 MHz. The current AWS–1 rules limit base station power in non-rural areas to 1640 watts EIRP for emission bandwidths less than 1 MHz and to 1640 watts per MHz EIRP for emission bandwidths greater than 1 MHz, and double these limits (3280 watts EIRP) in rural areas. The Commission has previously concluded that a power limitation of 32 dBW/MHz EIRP is appropriate for base stations in the 2180–2190 MHz band, and that a power limitation of 32 dBW EIRP is appropriate for base stations in the 2190–2200 MHz band. Although neither of these limits aligns exactly with the AWS–1 rules, the 32 dBW EIRP level was specifically chosen because it approximates the 1640 watt EIRP limit of AWS–1 specified in § 27.50(d). The Commission did not consider whether the higher power level of 3280 watts EIRP allowed for rural AWS–1 base stations is appropriate for 2180–2200 MHz. Although not fully aligned with AWS–1, the current power limits are very similar. The 32 dBW EIRP limit is the same as the AWS–1 limit of 1640 watts EIRP for emissions under 1 MHz, but is more burdensome for larger bandwidths. Similarly, the 32 dBW/MHz EIRP limit is the same as the AWS–1 limit of 1640 watts/MHz EIRP for emission over 1 MHz, but is more burdensome for emissions under 1 MHz. Changing both limits to the existing AWS–1 rule of 1640 watts EIRP for emissions less than 1 MHz and 1640 watts/MHz EIRP for emissions over 1 MHz would best allow flexibility for the use of various bandwidths in the AWS–4 spectrum.

45. Furthermore, allowing the increase of these power levels to the current AWS–1 rules of 3280 watts EIRP for emissions less than 1 MHz and 3280 watts/MHz EIRP for emissions over 1 MHz in rural areas may promote the

Commission's goals of furthering rural deployment of broadband services. Therefore, we propose that § 27.50(d)(1–2), which sets the AWS–1 power limits for base stations, should also apply to AWS–4. We seek comment on this proposal, including the costs and benefits of the proposal.

46. The current AWS–1 rules also require that base stations with transmit power above 1640 watts EIRP and 1640 watts/MHz EIRP must coordinate with licensees in adjacent AWS blocks located within 120 kilometers, BRS licensees in the 2155–2160 MHz band located within 120 kilometers, and satellite entities in the 2025–2110 MHz band. As AWS–4 is not adjacent to the 2155–2160 MHz and 2025–2110 MHz bands, we do not see a need to carry these requirements over to AWS–4. Therefore, we propose only that AWS–4 base stations with transmit power above 1640 watts EIRP and 1640 watts/MHz EIRP be required to coordinate with users in adjacent AWS blocks located within 120 kilometers. We seek comment on this proposal, including the costs and benefits of the proposal.

47. *Mobile stations.* The part 25 ATC rules set a power limit of 1 dBW (1.25 watts) EIRP in a bandwidth of 1.23 MHz for mobiles operating in 2000–2020 MHz. The existing AWS–1 rules set a power limit of 1 watt EIRP for mobiles operating in AWS–1, which is somewhat more restrictive. In the interest of harmonizing the AWS rules, and given the similarity of these two limits, we propose that the more restrictive limit of § 27.50(d)(4), which is 1 watt EIRP, should apply to AWS–4. We seek comment on this proposal, including the costs and benefits of the proposal.

4. Antenna Height Restrictions

48. We propose that the flexible antenna height rules that apply to AWS–1 should also apply to AWS–4. We seek comment on this proposal, including the costs and benefits of the proposal.

49. *Base stations.* Specific antenna height restrictions for AWS–1 base stations are not set forth in part 27 of our rules. However, all part 27 services are subject to § 27.56, which prevents antenna heights that would be a hazard to air navigation. *See* 47 CFR 27.56. Furthermore, the limitations of field strength at the geographical boundary of the license discussed below also effectively limit antenna heights. We propose that no unique antenna height limits are needed for AWS–4 facilities; rather, we believe that the general height restrictions are sufficient. We seek comment on this proposal, including the costs and benefits of the proposal.

50. *Fixed stations.* Section 27.50(d)(4) specifies a height restriction of 10 meters for fixed stations operating in AWS–1 spectrum. 47 CFR 27.50(d). Given the similarity of the proposed AWS–4 use to AWS–1 use, we propose that this rule should be expanded to apply to AWS–4, as well. We seek comment on this proposal, including the costs and benefits of the proposal.

5. Co-Channel Interference Among AWS–4 Systems

51. If we ultimately decide to license the AWS–4 bands on the basis of geographic service areas that are less than nationwide, we will have to ensure that such licensees do not cause interference to co-channel systems operating along common geographic borders. The current rules for AWS–1 address the possibility of harmful co-channel interference between geographically adjacent licenses by setting a field strength limit of 47 dBμV/m at the edge of the license area. *See* 47 CFR 27.55(a)(1). Due to the similarities between AWS–1 and AWS–4 spectrum use, we propose that this same signal strength limit is appropriate for AWS–4, and therefore that § 27.55(a)(1) should be expanded to include the 2180–2200 MHz band. We seek comment on this proposal, including the costs and benefits of the proposal.

6. Canadian and Mexican Coordination

52. Section 27.57(c) of our rules indicates that AWS–1 operations are subject to international agreements with Mexico and Canada. *See* 47 CFR 27.57(c). Until such time as any adjusted agreements between the United States, Mexico and/or Canada can be agreed to, operations must not cause harmful interference across the border, consistent with the terms of the agreements currently in force. We note that further modification (of the proposed rules) might be necessary in order to comply with any future agreements with Canada and Mexico regarding the use of these bands. We seek comment on this issue, including the costs and benefits of alternative approaches to this issue.

7. Other Technical Issues

53. There are several additional technical rules applicable to all part 27 services. Specifically, these are: § 27.51 Equipment authorization, § 27.52 RF safety, § 27.54 Frequency stability, § 27.56 Antennas structures; air navigation safety, and § 27.63 Disturbance of AM broadcast station antenna patterns. 47 CFR 27.51, 27.52, 27.54, 27.56, 27.63. As AWS–4 will be a part 27 service, we propose that all of these rules should apply to all AWS–4 licensees, including licensees who acquire their licenses through partitioning or disaggregation. We seek comment on this approach, including the costs and benefits of this approach.

C. Protection of MSS Operations

54. We propose to adopt a rule requiring an AWS–4 licensee to protect the incumbent 2 GHz MSS licensee from harmful interference. The 2000–2020 MHz band was allocated to MSS in 1997; fourteen years later the Commission added the current co-primary terrestrial Fixed and Mobile allocations. In adding the co-primary Fixed and Mobile allocations in 2011, the Commission explained that ''MSS remains co-primary in the 2 GHz MSS band.'' Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz, 76 FR 31252 (2011) (*2 GHz Band Co-Allocation Order*). The Commission further explained that the addition of the new allocation ''will not result in harmful interference, and would not inevitably lead to uses that would result in harmful interference,'' impliedly because (other than the pre-existing MSS/ATC rules) no terrestrial service rules yet existed for the band. *2 GHz Band Co-Allocation Order.* As we are now proposing service rules for the AWS–4 band, we propose to codify the determination that ''adding co-primary Fixed and Mobile allocations in this band will not result in harmful interference'' by requiring that AWS–4 licensees protect the 2 GHz MSS licensee from harmful interference. *Id.* We seek comment on this proposal, including the costs and benefits of the proposal.

D. Assignment of AWS–4 License(s)

55. The Commission concluded in 2003 that it would grant additional ATC authority to the MSS incumbents. *See Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L–Band, and the 1.6/2.4 GHz Bands,* 68 FR 33640 (2003) (*ATC Report and Order*). The Commission reasoned that separately controlled MSS and terrestrial mobile operations (*i.e.,* two ubiquitous mobile services) in the same band would be ''impractical and ill-advised'' because the parties would not be able to overcome the technical hurdles to reach a workable sharing arrangement. In particular, the Commission stated:

While * * * it may be theoretically possible for two different firms to own and operate the satellite and terrestrial portions of a single system, we believe that, in reality, no two operators are likely to succeed in organizing themselves to manage the highly complex coordination process required between both the MSS and the terrestrial component at the same time in the same band in the same region. To optimally balance the frequency usage of the terrestrial and satellite portions of the system, the ATC portion must be operated in a manner that controls the ATC terminal-to-MSS uplink interface while still providing ATC service. *ATC Report and Order.*

Based on its technical analyses, the Commission also concluded that ''we cannot grant to a third party the right to use licensed MSS spectrum for terrestrial use without impacting the rights of the existing satellite licensees.'' *ATC Report and Order.*

56. In the ATC proceeding, the Commission adopted a blanket authorization process to implement geographic area licensing of ATC base station facilities operating in the U.S. coverage of the MSS space segment, *i.e.,* all 50 states and the U.S. territories and possessions. DBSD and TerreStar received ATC authority in 2009 and 2010, respectively, allowing for the deployment of terrestrial base stations and collectively up to three million dual-mode MSS/ATC user terminals in the United States. Thus, in considering the impact that AWS–4 operations would have on the existing 2 GHz MSS licensee, we also consider the impact on the MSS licensee's significant, albeit ancillary, authority to operate terrestrial stations in the 2 GHz band throughout the nation.

57. Taken together, the above concerns appear to present strong reasons that lead us to propose that AWS–4 licenses in this band should be assigned to the incumbent MSS licensee. First, the complexities of coordination between MSS and terrestrial uses that the Commission identified in 2003 in the *ATC Report and Order* suggest that assignment of terrestrial licenses to an entity other than the incumbent MSS licensee remains impractical. Second, we expect that the interference problems associated with two or more distinct terrestrial licensees in the same band (*i.e.,* distinct co-channel ATC and part 27 licensees) point to assigning the AWS–4 licenses to the incumbent MSS licensee. Third, we observe that this result would not diminish the MSS licensee's existing ability to provide terrestrial service in the band.

58. We seek comment on these issues. In particular, commenters should address whether there have been technological advances or other developments since 2003 that would either reinforce or alter these points and provide detailed technical analysis supporting any information provided. Should the record show, contrary to our expectations, that same-band, separate-operator sharing is possible—between AWS–4 licensees and an MSS licensee's satellite and ATC operations—then we seek comment on alternative approaches to licensing the new service under the Communications Act that would achieve our goal of making additional spectrum available for terrestrial mobile broadband use. In addition, we seek comment on what effect the spectrum shift alternatives proposed above would have on assigning AWS–4 licenses. We further seek comment on the impact, including the quantification of the costs and benefits that any method for assigning licenses would have on innovation, investment, and competition.

1. Section 316 License Modification

59. Based on our expectation that the Commission's earlier technical findings are still sound, and mindful of the 2 GHz MSS license holder's existing rights to operate MSS in the AWS–4 band and our proposal, above, to require protection of MSS uses, we propose to grant terrestrial authority to operate in the AWS–4 band to the current 2 GHz MSS licensee. We believe this would serve the public interest, convenience and necessity by making more spectrum available for broadband use and avoiding harmful electromagnetic interference.

60. *Legal Authority.* Under section 316 of the Communications Act, the Commission has the authority to modify a station license if ''in the judgment of the Commission such action will promote the public interest, convenience, and necessity.'' *See* 47 U.S.C. 316(a)(1). As the D.C. Circuit explained in *California Metro Mobile Communications* v. *FCC,* ''section 316 grants the Commission broad power to modify licenses; the Commission need only find that the proposed modification serves the public interest, convenience and necessity.'' *California Metro Mobile Communications* v. *FCC,* 365 F.3d 38, 45 (D.C. Cir. 2004) For example, in that case, the court found that the Commission's modification served the public interest, even though it was based on an analysis of potential rather than actual interference, and the modification could cause a minor disruption in the licensee's operations. Here, we propose that, once the AWS–4 service rules are effective, we would issue an Order of Proposed Modification, under section 316 of the Communications Act, to modify the existing 2 GHz MSS licensee's authority to operate in the 2000–2020 MHz and 2180–2200 MHz bands by adding part 27 terrestrial authority and obligations, which would apply to all the AWS–4 service areas in these bands. We seek comment on this proposed approach, including the costs and benefits of the proposal.

61. *Public Interest Considerations.* The incumbent MSS licensee holds exclusive authority to operate terrestrial base stations in the AWS–4 band nationwide. And existing Commission rules permit the MSS licensee to enter into spectrum manager leasing arrangements with spectrum lessees. We believe that modifying the 2 GHz MSS licensee's authority as described herein, to have 2 GHz terrestrial operations governed under part 27, would remove outdated regulatory barriers that have frustrated the Commission's goal of having the 2 GHz band used for terrestrial mobile broadband. Additionally, if the record developed in this proceeding confirms that current technology will not permit separate MSS and terrestrial mobile licensees, the envisioned section 316 license modification would serve the public interest, convenience and necessity, by: (1) Making more spectrum available for broadband use, and (2) avoiding harmful electromagnetic interference. We seek comment on this proposal, including the costs and benefits of the proposal.

62. The availability and quality of wireless broadband services will likely become constrained if additional spectrum does not become available to enable network expansion and technology upgrades. This could result in higher prices, poor service quality, an inability for the U.S. to compete effectively on an international basis, depressed demand and, ultimately, a drag on innovation. To address the need for broadband spectrum, the Commission has endeavored to promote the use of the 2 GHz MSS band, but there is virtually no current commercial use of this spectrum.

63. We believe that modifying the 2 GHz MSS licensee's authority as described herein would enhance the licensee's ability to offer high-quality, affordable terrestrial wireless broadband services, while retaining the right to offer MSS using the same spectrum; spectrum that is already licensed nationwide on an exclusive, primary basis for MSS. Thus, we propose that authorizing terrestrial operations will provide the 2 GHz MSS licensee with the possibility of achieving greater usage

of the 2000–2020 MHz and 2180–2200 MHz bands than are possible under the current regulations. We seek comment on this proposal. We also seek comment on the extent that this proposal would increase innovation and investment in mobile broadband use of this spectrum. Commenters should discuss and quantify the costs and benefits of the proposal.

64. The Commission may also modify licenses to achieve the public interest purpose of avoiding harmful interference. In 2003, the Commission concluded that separately controlled MSS and terrestrial operations (*i.e.,* two ubiquitous mobile services) in the same band would be ''impractical and ill-advised'' because the parties would not be able to overcome the technical hurdles to reach a workable sharing arrangement. If the record developed in this proceeding confirms that allowing terrestrial operations in the 2000–2020 MHz and 2180–2200 MHz bands independent from the MSS licensee would likely substantially compromise the effectiveness of both the mobile satellite and terrestrial services, we propose that the public interest would be best served by modifying the license to operate in the 2 GHz MSS band, as contemplated herein, rather than making the band available for initial terrestrial licenses under a sharing regime with MSS. We seek comment on this proposal and its effect on interference. Commenters should discuss and quantify the costs and benefits of this proposal on eliminating harmful interference.

65. *Other Assignment Approaches.* If, contrary to our expectations, the record developed in this proceeding reflects that it is now possible for separately authorized, independent AWS–4 licensees to protect MSS including ATC operations, then we seek comment on other approaches to authorizing terrestrial use, upon creation of the new AWS–4 service. These other approaches may include the assignment of new initial licenses via competitive bidding, if mutually exclusive applications are received, under section 309(j) of the Communications Act. *See* 47 U.S.C. 309(j). Commenters should be mindful that existing MSS licensees would still retain MSS licenses and, therefore, any new terrestrial licensees would have to protect the incumbent 2 GHz MSS licensee from harmful interference. Commenters should discuss and quantify and costs and benefits associated with any alternative approaches.

66. *Applications for Any AWS–4 Licenses Returned to the Commission.* There is a potential, under proposals discussed herein or otherwise, for AWS–4 licenses to be terminated automatically or otherwise to become a part of the Commission's spectrum inventory. Under such a scenario, we would resolve any mutually exclusive applications for such AWS–4 licenses using competitive bidding. We seek comment on the appropriate competitive bidding procedures below.

67. *Procedures for Any AWS–4 Licenses Subject to Assignment by Competitive Bidding.* Some of the scenarios on which we seek comment in this notice could result in the acceptance of mutually exclusive applications for licenses that would be resolved by competitive bidding. Accordingly, we seek comment on a number of proposals relating to competitive bidding for licenses for spectrum in the AWS–4 band.

68. We propose that the Commission would conduct any auction for AWS–4 licenses in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules, and substantially consistent with the competitive bidding procedures that have been employed in previous auctions. *See* 47 CFR 1.2101–1.2114. Specifically, we propose to employ the part 1 rules governing competitive bidding design, designated entity preferences, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. Under this proposal, such rules would be subject to any modifications that the Commission may adopt for its part 1 general competitive bidding rules in the future. In addition, consistent with our long-standing approach, auction-specific matters such as the competitive bidding design and mechanisms, as well as minimum opening bids and/or reserve prices, would be determined by the Wireless Telecommunications Bureau pursuant to its delegated authority. We seek comment on this approach, including the costs and benefits of this approach. We also seek comment on whether any of our part 1 rules would be inappropriate or should be modified for an auction of licenses in the AWS–4 bands.

69. In authorizing the Commission to use competitive bidding, Congress mandated that the Commission ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' 47 U.S.C. 309(j)(4)(D). In addition, section 309(j)(3)(B) of the Communications Act provides that, in establishing eligibility criteria and bidding methodologies, the Commission shall promote ''economic opportunity and competition * * * by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' 47 U.S.C. 309(j)(3)(B). One of the principal means by which the Commission fulfills this mandate is through the award of bidding credits to small businesses.

70. In the *Competitive Bidding Second Memorandum Opinion and Order,* the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. *See Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* 59 FR 44272 (1994) (*Competitive Bidding Second Memorandum Opinion and Order).* Further, in the *Part 1 Third Report and Order,* the Commission, while standardizing many auction rules, determined that it would continue a service-by-service approach to defining small businesses. *See Amendment of Part 1 of Commission's Rules—Competitive Bidding Procedures,* 63 FR 770 (1997) (*Part 1 Third Report and Order).*

71. In the event that the Commission assigns exclusive geographic area licenses for terrestrial use of the AWS–4 band, we believe that this spectrum would be employed for purposes similar to those for which the AWS–1 band is used. We therefore propose to establish the same small business size standards and associated bidding credits for the AWS–4 bands as the Commission adopted for the AWS–1 band. Thus, we propose to define a small business as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. We seek comment on this proposal, including the costs and benefits of the proposal.

72. We propose to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent, as set forth in the standardized schedule in part 1 of our rules. We seek comment on the use of these standards and associated bidding credits, with particular focus on the appropriate definitions of small businesses and very

small businesses as they may relate to the size of the geographic area to be served and the spectrum allocated to each license. Commenters should discuss and quantify any costs or benefits associated with these standards and associated bidding credits as they relate to the proposed geographic areas. In discussing these issues, commenters are requested to address and quantify the expected capital requirements for services in these bands and other characteristics of the service. Commenters are also invited to use comparisons with other services for which the Commission has already established auction procedures as a basis for their comments and any quantification of costs and benefits regarding the appropriate small business size standards.

73. In establishing the criteria for small business bidding credits, we acknowledge the difficulty in accurately predicting the market forces that will exist at the time these frequencies are licensed. Thus, our forecasts of types of services that will be offered over these bands may require adjustment depending upon ongoing technological developments and changes in market conditions.

74. Finally, we seek comment on whether to use a different approach to bidding credits. To the extent commenters support a different approach to bidding credits than those discussed here, they should support their proposals with relevant information, including costs and benefits of their alternative proposals on the types of system architecture that are likely to be deployed in these bands, the availability of equipment, market conditions, and other factors that may affect the capital requirements of the types of services that may be provided.

E. Performance Requirements

75. The Commission establishes performance requirements to promote access to spectrum and the provision of service, including to rural areas. Over the years the Commission has applied different performance and construction requirements to different spectrum bands. For example, for licensees operating in the 2.3 GHz Wireless Communications Services (WCS) band, the Commission adopted performance requirements, which include population-based construction requirements (40 percent of the license area's population within three-and-a-half (3.5) years and 75 percent within six (6) years) and reporting requirements. *See* 47 CFR 27.14(p).

76. We propose to establish performance requirements for AWS–4 licensees. Our proposal is informed by proposals made in the proceeding on DISH's request for waiver of certain ATC rules for the 2000–2020 MHz and 2180–2200 MHz bands. Specifically, DISH proposed a buildout schedule based on ''the buildout principles established in the Sprint/Nextel and Sprint/Clearwire transaction decisions'' and ''keyed to commercial availability of the LTE Advanced standard.'' DISH, DBSD, TerreStar Consolidated Opposition to Petitions to Deny and Response to Comments, IB Docket Nos. 11–149, 11–150, at 31 (Oct. 27, 2011) (internal citations omitted). The Sprint/Nextel build-out requirements were to offer service to a population of 15 million within four years and 30 million within 6 years; Applications of Nextel Communications, Inc., and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05–63, *Memorandum Opinion and Order,* 20 FCC Rcd 13967, 14028 paragraphs 164–65 (2005) the Sprint/Clearwire build-out requirement is to ''cover 140 million people by the end of 2010,'' slightly more than two years after the adoption of the order. Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08–94, *Memorandum Opinion and Order,* 23 FCC Rcd 17570, 17617 paragraph 119 (2008). Alternatively, AT&T proposes that the Commission impose the build out conditions consistent with the March 2010 Harbinger/SkyTerra transfer of control. Letter from Joan Marsh, Vice President—Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Sec'y, Federal Communications Commission, Docket No. 11–149, at 2 (Jan. 26, 2012). In approving that transfer, the Commission required Harbinger (now operating as LightSquared) to build out its 4G terrestrial network according to Harbinger's proposed build-out schedule of providing coverage to at least 100 million people in the United States by the end of 2012 (21 months after the transfer order), to at least 145 million people by the end of 2013 (33 months), and to at least 260 million people in the United States by the end of 2015 (57 months). SkyTerra Communications, Inc., Transferor, and Harbinger Capital Partners Funds, Transferee, Applications for Consent to Transfer of Control of SkyTerra Subsidiary, LLC, IB Docket No. 08–184, *Memorandum Opinion and Order and Declaratory Ruling,* 25 FCC Rcd 3059, 3085, 3088–89, 3098 at paragraphs 56, 72, App. B at Att. 2, p.1 (2010). On February 15, 2012, the Commission proposed to modify LightSquared's satellite license ''to suspend indefinitely LightSquared's underlying ATC authorization, first granted in 2004, to an extent consistent with the NTIA Letter.'' International Bureau Invites Comment on NTIA Letter Regarding LightSquared Conditional Waiver, IB Docket No. 11–109, *Public Notice,* DA 12–214 at 4 (Feb. 15, 2012).

77. *Build-out requirements.* Building off of these approaches and in light of the unique circumstances of the AWS–4 band, including its interplay with the 2 GHz MSS band located in the same frequencies, we propose to adopt a middle ground between these two proposals. We seek comment on the following build-out requirements for AWS–4 spectrum:

- AWS–4 Interim Build-out Requirement: Within three (3) years, an AWS–4 licensee shall provide signal coverage and offer service to at least thirty (30) percent of their total AWS–4 population. A licensee's total AWS–4 population shall be calculated by summing the population of each of its license authorizations in the AWS–4 band.
- AWS–4 Final Build-out Requirement: Within seven (7) years, an AWS–4 licensee shall provide signal coverage and offer service to at least seventy (70) percent of the population in each of its license authorization areas.

78. We propose these performance requirements in an effort to foster timely deployment in the AWS–4 band for the provision of wireless, terrestrial broadband service, and to enable the Commission to take appropriate corrective action should such deployment fail to occur. Specifically, the interim benchmark at three years would ensure that a licensee will begin deploying facilities quickly and thereby evidencing meaningful utilization of the spectrum. At the same time, by proposing a relatively low population threshold in the interim benchmark, we acknowledge that large-scale network deployment may ramp up over time as equipment becomes available and a customer base is established. In addition, by proposing a final build-out requirement timeline of seven years, we believe we allow a reasonable amount of time for any AWS–4 licensee to attain nationwide scale. Further, we propose geographic area based (*i.e.* EA based) requirements for the final milestone in order to encourage deployment in all areas of the country. We seek comment on the proposed build-out requirements. We encourage comment on whether our proposals represent the appropriate

balance between requirements that are too low as to not result in meaningful build-out and those that would be too high as to be unattainable. Would the DISH or AT&T proposals represent more appropriate requirements? Commenters should discuss and quantify how any supported buildout requirements will affect investment and innovation as well as discuss and quantify other costs and benefits associated with the proposal.

79. *Penalties for failure to meet construction requirements.* Again, building on what we have learned from other bands and on the unique characteristics of the AWS–4 bands, we propose and seek comment, including the costs and benefits, on the following penalties in the event an AWS–4 licensee fails to satisfy its build-out requirements:

- In the event an AWS–4 licensee fails to meet the AWS–4 Interim Build-out Requirement, *all* of the licensee's AWS–4 license authorizations shall terminate automatically without Commission action.
- In the event an AWS–4 licensee fails to meet the AWS–4 Final Build-out Requirement in any of its license authorizations, its AWS–4 license for each license authorization areas in which it fails to meet the build-out requirement shall terminate automatically without Commission action.

80. If the Commission assigns AWS–4 rights to the 2 GHz MSS licensee pursuant to a section 316 license modification, the license would include both part 27 terrestrial and part 25 mobile satellite authorizations. In such a situation, we propose that the failure to satisfy a build-out requirement would trigger the automatic termination of the mobile satellite authorization in any area in which the terrestrial authorizations are terminated. Specifically, failure to meet the AWS–4 Interim Build-out Requirement would result in the AWS–4 and 2 GHz MSS licenses automatically terminating in all license areas (*i.e.,* nationwide). Failure to meet the AWS–4 Final Build-out Requirement would result in the AWS–4 and 2 GHz MSS licenses automatically terminating in those areas where the licensee fails to meet the requirement. This proposal appears consistent with the 2 GHz MSS licensee's assertion that the ability to offer stand-alone terrestrial service is critical to support the provision of MSS in this spectrum. We similarly expect that failure to satisfy terrestrial build-out requirements would be accompanied by failure to provide meaningful MSS. We seek comment on whether the protection that is afforded to MSS operations under our proposed rules should be modified if the MSS licensee fails to meet the AWS–4 Final Build-out Requirement and the costs and benefits to any modification. If so, to what extent should the interference protection be modified?

81. We further propose that, in the event that a licensee's authority to operate terminates, terrestrial spectrum rights would become available for reassignment pursuant to the competitive bidding provisions of section 309(j). Further, consistent with the Commission's rules for other spectrum bands, including AWS–1, 700 MHz, and Broadband Radio Service, we propose that any AWS–4 licensee who forfeits its license for failure to meet it performance requirements would be precluded from regaining it. *See, e.g.,* 27 CFR 27.14(a), (j), (o). We observe that for AWS–4 spectrum assigned under section 316, termination of individual AWS–4 area licenses for failure to satisfy the AWS–4 Final Build-out Requirement could result in an inability for the Commission to meaningfully reassign the spectrum rights should the Commission continue to require coordination of reassigned spectrum with the MSS operator. We request comment on the appropriate remedy in such circumstances, and commenters should discuss and quantify the costs and benefits or any proposed remedy. For example, should any subsequent Commission reassignment of the AWS–4 spectrum occur without a requirement to coordinate with, or protect MSS operations or should the MSS operations continue to receive interference protection?

82. *Compliance procedures.* Consistent with § 1.946(d) of the Commission's rules, we propose to require AWS–4 licensees to demonstrate compliance with the new performance requirements by filing a construction notification within 15 days of the relevant milestone certifying that they have met the applicable performance benchmark. *See* 47 CFR 1.946(d) (''notification[s] must be filed with Commission within 15 days of the expiration of the applicable construction or coverage period''). Further, we propose that each construction notification include electronic coverage maps and supporting documentation, which must be truthful and accurate and must not omit material information that is necessary for the Commission to determine compliance with its performance requirements.

83. Electronic coverage maps must accurately depict the boundaries of each license area in the licensee's service territory. If a licensee does not provide reliable signal coverage to an entire license area, we propose that its map must accurately depict the boundaries of the area or areas within each license area not being served. Further, we propose that each licensee also must file supporting documentation certifying the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology.

F. Regulatory Issues; Licensing and Operating Rules

84. We propose to provide AWS–4 licensees with the flexibility to provide any fixed or mobile service that is consistent with the allocations for this spectrum, as we have generally done with other spectrum allocated or designated for licensed fixed and mobile services, *e.g.,* AWS–1 spectrum. We also propose to license this spectrum under our market-oriented part 27 rules. We seek comment on these proposals. In addition, we seek comment on the appropriate regulatory framework for AWS–4 licenses, the license term, criteria for renewal, and other licensing and operating rules pertaining to these bands. We also seek comment on the potential impact of all of our proposals on competition. Commenters should also comment on how any proposal that they support enhances competition and results in rapid provisioning of competitive mobile broadband services to consumers. Commenters also should discuss the costs and benefits of these proposals and any alternative proposals.

1. Flexible Use, Regulatory Framework, and Regulatory Status

85. *Flexible Use.* We propose service rules for the AWS–4 band that would permit a licensee to employ the spectrum for any terrestrial use permitted by the United States Table of Frequency Allocations contained in part 2 of our rules (*i.e.,* fixed or mobile services). 47 CFR 2.106. Part 27 licensees must also comply with other Commission rules of general applicability. *See* 47 CFR 27.3. These service rule proposals cover only the terrestrial use of the spectrum in this band. MSS use in this spectrum will continue to be governed by part 25. Congress recognized the potential benefits of flexibility in allocations of the electromagnetic spectrum and amended the Communications Act in 1999 to add section 303(y). This section

provides the Commission with authority to provide for flexibility of use if:

> (1) such use is consistent with international agreements to which the United States is a party; and (2) the Commission finds, after notice and an opportunity for public comment, that (A) such an allocation would be in the public interest; (B) such use would not deter investment in communications services and systems, or technology development; and (C) such use would not result in harmful interference among users.

47 U.S.C. 303(y).

86. We believe that our proposal for flexibility meets these section 303(y) criteria. The public interest benefits of flexibility are manifold. The Commission has identified the establishment of maximum feasible flexibility in both allocations and service rules as a critical means of ensuring that spectrum is put to its most beneficial use. For example, in a 1999 *Policy Statement* on spectrum management, the Commission observed that ''[i]n the majority of cases, efficient spectrum markets will lead to use of spectrum for the highest value end use,'' and that ''[f]lexible allocations may result in more efficient spectrum markets.'' *See* Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millenium, FCC 99–354, *Policy Statement,* 14 FCC Rcd 19868, 19870 paragraph 9 (1999). We would expect these economic efficiencies to foster—not deter—technology development and investment in communications services and systems. And the technical rules we are proposing here should prevent harmful interference among users. In addition, as discussed above, flexible use would be subject to bilateral discussions commonly undertaken whenever spectrum is put to use in border areas, but is consistent with applicable international agreements. Finally, in the *2 GHz Band Co-Allocation Order,* the Commission added co-primary Fixed and Mobile allocations, along with the pre-existing MSS allocation, in the 2 GHz band, expressly ''lay[ing] the foundation for more flexible use of the band [and] * * * promoting investment in the development of new services and additional innovative technologies.'' *2 GHz Band Co-Allocation Order.*

87. We seek comment on our proposal to provide for flexible use of the AWS–4 band, especially in light of the section 303(y) criteria noted above. If any restrictions are warranted, what should they be and why are they needed? Commenters should quantify the costs and benefits or any such restrictions. Are there trade-offs between flexibility and investment in technology and new services that we should consider? To the extent commenters believe flexibility will deter investment in these bands, they should also suggest specific restrictions on how spectrum should be used by a licensee, and provide detailed analysis and quantification of the economic tradeoffs between flexibility and investment that justify any particular recommended restriction on use. We also specifically seek comment on the types of uses that pose the greatest risk of interference to terrestrial or satellite use of this spectrum, and the quantification of these risks.

88. *Regulatory Framework.* Because we propose to permit flexible use of these bands, we also propose licensing the spectrum under the flexible regulatory framework of part 27 of our rules. Unlike other rule parts applicable to specific services, part 27 does not prescribe a comprehensive set of licensing and operating rules for the spectrum to which it applies. Rather, for each frequency band under its umbrella, part 27 defines permissible uses and any limitations thereon, and specifies basic licensing requirements. The licensing requirements for a number of spectrum bands, including the AWS spectrum at 1710–1755 MHz and 2110–2155 MHz and the Upper and Lower 700 MHz bands, are contained in part 27. In order to promote flexibility and permit market forces to determine what services are ultimately offered in these bands, we therefore seek comment on our proposal to license the AWS–4 band under part 27 service and licensing rules, and any associated costs or benefits or doing so.

89. *Regulatory Status.* We propose to apply the regulatory status provisions of § 27.10 of the Commission's rules to licensees in the AWS–4 band. The Commission's current mobile service license application requires an applicant for mobile services to identify the regulatory status of the service(s) it intends to provide because service offerings may bear on eligibility and other statutory and regulatory requirements. Under part 27, the Commission permits applicants who may wish to provide both common carrier and non-common carrier services (or to switch between them) under a single license to request status as both a common carrier and a non-common carrier. Thus, a part 27 applicant is not required to choose between providing common carrier and non-common carrier services. We propose to adopt this same approach here. Licensees in the AWS–4 band would be able to provide all allowable services anywhere within their licensed area at any time, consistent with their regulatory status. We believe that this approach is likely to achieve efficiencies in the licensing and administrative process, and provide flexibility to the marketplace. We seek comment on this approach and the costs and benefits of this approach.

90. We further propose that applicants and licensees in the AWS–4 band be required to indicate a regulatory status for any services they choose to provide. Apart from this designation of regulatory status, we would not require applicants to describe the services they seek to provide. We caution potential applicants that an election to provide service on a common carrier basis typically requires that the elements of common carriage be present; otherwise the applicant must choose non-common carrier status. If potential applicants are unsure of the nature of their services and their classification as common carrier services, they may submit a petition with their applications, or at any time, requesting clarification and including service descriptions for that purpose. We propose to apply this framework to AWS–4 licensees and seek comment on this proposal, including the costs and benefits of this proposal.

91. We also propose that if a licensee were to change the service or services it offers such that its regulatory status would change, the licensee must notify the Commission. A change in a licensee's regulatory status would not require prior Commission authorization, provided the licensee was in compliance with the foreign ownership requirements of section 310(b) of the Communications Act that would apply as a result of the change, consistent with the Commission's rules for AWS–1 spectrum. Consistent with our part 27 rules, we propose to require the notification within 30 days of a change made without the need for prior Commission approval, except that a different time period may apply where the change results in the discontinuance, reduction, or impairment of the existing service. We seek comment on this proposal, including the costs and benefits of this proposal.

2. Ownership Restrictions

92. *Foreign Ownership.* We propose that the provisions of § 27.12 of the Commission's rules should apply to applicants applying for licenses in the AWS–4 band. 47 CFR 27.12. Section 27.12 implements section 310 of the Communications Act, as modified by the Telecommunications Act of 1996, imposing foreign ownership and citizenship requirements that restrict the issuance of licenses to certain

applicants. An applicant requesting authorization for services other than broadcast, common carrier, aeronautical en route, or aeronautical fixed services would be subject to section 310(a), but not to the additional prohibitions of section 310(b). An applicant requesting authorization for these particular services would be subject to both sections 310(a) and 310(b). As applicable to these bands, we do not believe that common carriers and non-common carriers filing an application should be subject to varied reporting obligations. By establishing parity in reporting obligations, however, we do not propose a single, substantive standard for compliance. For example, we would be unlikely to deny a license to an applicant requesting authorization exclusively to provide services not enumerated in section 310(b), solely because its foreign ownership would disqualify it from receiving a license if the applicant had applied for a license to provide the services enumerated in section 310(b). We request comment on this proposal, including any costs or benefits of this proposal.

93. *Eligibility.* In recent years the Commission determined in a number of services that eligibility restrictions on licenses may be imposed only when open eligibility would pose a significant likelihood of substantial harm to competition in specific markets and when an eligibility restriction would be effective in eliminating that harm. This approach relies on market forces absent a compelling showing that regulatory intervention to exclude potential participants is necessary.

94. We propose not to apply any eligibility restrictions to AWS–4 licenses. We believe that open eligibility in the AWS–4 band would not pose a significant likelihood of substantial harm to competition in any specific markets, and thus an eligibility restriction in these bands is not warranted. We also believe that open eligibility in these bands is consistent with our statutory mandate to promote the development and rapid deployment of new technologies, products, and services; economic opportunity and competition; and the efficient and intensive use of the electromagnetic spectrum. We seek comment on this approach. Commenters should discuss the costs and benefits of the open eligibility proposal on competition, innovation, and investment.

95. *Spectrum Aggregation.* Spectrum is an essential input for the provision of mobile telephony/broadband services, and a service provider, in order to compete effectively, must have access to adequate spectrum. The Commission therefore closely examines the impact of spectrum aggregation on competition, innovation, and the efficient use of spectrum, generally on a case-by-case basis, upon establishing the relevant product and geographic markets. For example, in analyzing transactions, the Commission identifies markets where the spectrum amounts held provide reason for further competitive analysis. Thus, in this context, when evaluating the competitive effect of spectrum aggregation in bands that it has found available and suitable for the provision of mobile telephony/broadband services, the Commission conducts a market-by-market analysis of those markets identified by the initial screen to determine whether competitive harms would be likely to result. In addition, in 2008 the Commission determined that it would apply this standard competitive analysis to mobile spectrum acquired via competition bidding.

96. We seek comment on whether the acquisition of AWS–4 spectrum should be subject to the same general spectrum aggregation policies currently applicable to frequency bands that the Commission has determined to be available and suitable for mobile telephony/broadband services. Specifically, should the current spectrum screen for mobile telephony/broadband services be revised to include AWS–4 spectrum? Alternatively, depending on the specific rules and requirements that apply to AWS–4 spectrum, would there continue to be reasons to distinguish AWS–4 spectrum from other bands evaluated pursuant to the spectrum aggregation policies applicable to mobile telephony/broadband services? We seek comment generally on whether and how to address any spectrum aggregation concerns involving AWS–4 spectrum. Commenters should discuss and quantify any costs and benefits associated with alternative proposals on spectrum aggregation policies for AWS–4 spectrum on competition, innovation and investment.

3. Secondary Markets

97. *Partitioning and Disaggregation.* The Commission's part 27 rules generally allow for geographic partitioning and spectrum disaggregation. *See* 47 CFR 27.15. Geographic partitioning refers to the assignment of geographic portions of a license to another licensee along geopolitical or other boundaries. Spectrum disaggregation refers to the assignment of discrete amount of spectrum under the license to another entity. Disaggregation allows for multiple transmitters in the same geographic area operated by different companies on adjacent frequencies in the same band. As the Commission noted when first establishing partitioning and disaggregation rules, allowing such flexibility could facilitate the efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of services, increase competition by allowing market entry by new entrants, and expedite provision of services that might not otherwise receive service in the near term.

98. We seek comment on allowing licensees in the AWS–4 band to partition their service areas or to disaggregate their spectrum into new licenses. Part 27 rules for terrestrial wireless service provide that licensees may apply to partition their licensed geographic service areas or disaggregate their licensed spectrum at any time following the grant of their licenses. The Commission's rules also set forth the general requirements that apply with regard to approving applications for partitioning or disaggregation, as well as other specific requirements (*e.g.,* performance requirements) that would apply to licensees that hold licenses created through partitioning or disaggregation. We seek comment on applying these general procedures and requirements to any permissible partitioning or disaggregation of AWS–4 licenses. In particular, we seek comment on the performance requirements that would apply to any license created through partitioning or disaggregation. To ensure that the public interest would be served if partitioning or disaggregation is allowed, we propose requiring each AWS–4 licensee who is a party to a partitioning, disaggregation or combination of both to independently meet the applicable performance and renewal requirements. We believe this approach would facilitate efficient spectrum use, while enabling service providers to configure geographic area licenses and spectrum blocks to meet their operational needs. We seek comment on these proposals. Commenters should discuss and quantify the costs and benefits of these proposals on competition, innovation, and investment.

99. We acknowledge, however, that there may be technical impediments to partitioning or disaggregating satellite spectrum and service. As noted above, we seek comment on the Commission's earlier conclusion that the complexities of coordination between MSS and terrestrial operations render impractical assignment of terrestrial licenses to an

entrant other than the incumbent MSS licensee(s). Further, we seek comment on whether the actual capabilities of existing or future satellites make partitioning or disaggregation of spectrum difficult or problematic. We also acknowledge that part 25 of the Commission's rules do not contain provisions governing the partition or disaggregation of MSS. We seek comment on the affect the answers to these questions should have on whether we should permit disaggregation or partition of AWS–4 spectrum or licenses. Would an affirmation of the Commission's prior finding require us to not permit disaggregation or partition here? Conversely, if we find same-band, separate operator sharing possible and in the public interest, should that lead us apply the part 27 rules governing disaggregation and partition to AWS–4 spectrum and licensees. In the event that we apply rule § 27.15 to AWS–4 licensees (or otherwise permit partitioning or disaggregation for AWS–4 licensees), we seek comment on whether the part 25 rules should be amended to address partition and disaggregation of 2 GHz MSS spectrum by its licensees. Similarly, if we permit partitioning or disaggregation, should we require that any such arrangement apply to both the terrestrial and mobile satellite authorizations, but not to only one set of such authorizations? Should such a requirement only apply in the case where the AWS–4 authorizations are assigned to the same entity that holds the 2 GHz MSS rights? Commenters should discuss and quantify the costs and benefits of allowing partitioning and disaggregating AWS–4 spectrum.

100. We also seek comment on whether the Commission should adopt additional or different mechanisms to encourage partitioning and/or disaggregation of AWS–4 band spectrum and the extent to which such policies ultimately may promote more service, especially in rural areas. Commenters should discuss and quantify the costs and benefits of promoting more service using mechanisms to encourage partitioning and disaggregation AWS–4 spectrum, including the effects of the proposal on competition, innovation, and investment.

101. *Spectrum Leasing.* In 2003, in order to promote more efficient use of terrestrial wireless spectrum through secondary market transactions, while also eliminating regulatory uncertainty, the Commission adopted a comprehensive set of policies and rules to govern spectrum leasing arrangements between terrestrial licensees and spectrum lessees. These policies and rules enabled terrestrially-based Wireless Radio Service licensees holding ''exclusive use'' spectrum rights to lease some or all of the spectrum usage rights associated with their licenses to third party spectrum lessees, which then would be permitted to provide wireless services consistent with the underlying license authorization. Through these actions, the Commission sought to promote more efficient, innovative, and dynamic use of the terrestrial spectrum, expand the scope of available wireless services and devices, enhance economic opportunities for accessing spectrum, and promote competition among terrestrial wireless service providers. In 2004, the Commission built upon this spectrum leasing framework by establishing immediate approval procedures for certain categories of terrestrial spectrum leasing arrangements and extending the spectrum leasing policies to additional Wireless Radio Services. Since then, the Commission has added more terrestrial services to this spectrum leasing framework, including the Advanced Wireless Services in 2003 (when the service rules were adopted for this new service) and the Broadband Radio Services and Educational Broadband Services in 2004 (when the rebanding plan for these services in the 2.5 GHz band was adopted). Most recently, in 2011 in the *2 GHz Band Co-Allocation Order,* the Commission extended the Commission's secondary market spectrum leasing policies, procedures, and rules to MSS/ATC spectrum and licenses for spectrum manager lease arrangements; the Commission did not extend the secondary market regime to MSS/ATC *de facto* transfer lease arrangements because that would have been inconsistent with the need to have the same entity control both the terrestrial and satellite operations.

102. We now seek comment on the extent to which we should extend the Commission's secondary markets spectrum leasing policies and rules to AWS–4 spectrum. For the reasons articulated in the *2 GHz Band Co-Allocation Order,* we propose to extend spectrum manager lease arrangements to AWS–4 spectrum. With regard to *de facto* transfer lease arrangements, we propose to permit them only to the extent that we permit the disaggregation and partitioning of AWS–4 spectrum and licenses. To the extent that we find that the Commission's earlier conclusion that the complexities of coordination between MSS and terrestrial operations renders impractical assignment of terrestrial licenses to an entrant other than the incumbent MSS licensee(s), we propose to not allow *de facto* transfer lease arrangements for AWS–4 spectrum or licenses. Alternatively, if the record we develop reflects that same-band, separate terrestrial and mobile operator sharing is possible and would benefit the public interest, we propose to permit *de facto* transfer lease arrangements for AWS–4 spectrum and licenses. We seek comment on these proposals. Commenters should discuss the costs and benefits of extending the Commission's secondary spectrum leasing policies and rules to AWS–4 spectrum on competition, innovation, and investment.

4. License Term, Renewal Criteria, and Permanent Discontinuance of Operations

103. *License Term.* We propose to establish a 10-year term for licenses in the AWS–4 band. The Communications Act does not specify a term limit for AWS band licenses. The Commission has adopted 10-year license term for most wireless radio services licenses. We propose that in the AWS–4 band the license term similarly be 10 years. We seek comment on this proposal, including any costs and benefits of the proposal.

104. We also seek comment on whether a license term longer than 10 years would better serve the public interest. We note that in the *AWS–1 Report and Order,* we established an initial license term in the 1710–1755 MHz and 2110–2155 MHz bands of 15 years and subsequent renewal terms of 10 years because of the relocation and band clearance issues that were associated with those bands. Commenters who favor a different license term for the AWS–4 band should specify a reasonable license term and the bases for the period proposed. *AWS–1 Report and Order.* Commenters should also address whether it would be possible to have different license terms, depending on the type of service offered by the licensee, including the costs and benefits of an alternative proposal. We seek comment on how we would administer such an approach, particularly if licensees provide more than one service in their service area, or decide to change the type of service they plan to offer. We also seek comment on whether we should match the license term to the 15-year term of the satellite licenses. How would this be accomplished given that the term of the two 2 GHz MSS licenses have different expiration dates, and what are the costs and benefits of this proposal?

105. Under our license term proposal, if a license in these bands is partitioned or disaggregated, any partitionee or disaggregatee would be authorized to hold its license for the remainder of the partitioner's or disaggregator's original license term. This approach is similar to the partitioning provisions the Commission adopted for BRS, for broadband PCS licensees, for the 700 MHz band licensees, and for AWS–1 licenses at 1710–1755 MHz and 2110–2155 MHz. We emphasize that nothing in our proposal is intended to enable a licensee, by partitioning or disaggregation, to be able to confer greater rights than it was awarded under the terms of its license grant; nor would any partitionee or disaggregatee obtain rights in excess of those previously possessed by the underlying Commission licensee. We seek comment on these proposals, including the cost and benefits of these proposals.

106. *Renewal Criteria.* Pursuant to section 308(b) of the Communications Act, the Commission may require renewal applicants to ''set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station'' as well as ''such other information as it may require.'' 47 U.S.C. 308(b). We propose to adopt AWS–4 license renewal requirements consistent with those adopted in the *700 MHz First Report and Order* and which form the basis of the renewal paradigm proposed in our recent *Wireless Radio Services Renewal NPRM. See Service Rules for the 698–746, 747–762 and 777–792 MHz Bands,* 72 FR 24238 (2007) (*700 MHz First Report and Order); Amendment of parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services,* 75 FR 38959 (2010) (*Wireless Radio Services Renewal NPRM*). We emphasize that, as the Commission made clear in both of these items, a licensee's performance showing and its renewal showing are two distinct showings. Broadly speaking, a performance showing provides a snapshot in time of the level of a licensee's service. By contrast, a renewal showing provides information regarding the level and types of the licensee's service offered over its entire license term.

107. We propose that applicants for renewal of AWS–4 licenses file a ''renewal showing,'' in which they demonstrate that they have and are continuing to provide service to the public, and are compliant with the Commission's rules and policies and [with] the Communications Act. In the *700 MHz First Report and Order,* the Commission explained that in the renewal context, the Commission considers ''a variety of factors including the level and quality of service, whether service was ever interrupted or discontinued, whether service has been provided to rural areas, and any other factors associated with a licensee's level of service to the public.'' *700 MHz First Report and Order.* The *WRS Renewals NPRM and Order* also proposed to consider the extent to which service is provided to qualifying tribal lands. *WRS Renewals NPRM and Order.* We propose that these same factors should be considered when evaluating renewal showings for the AWS–4 band and seek comment on this approach. Commenters should discuss and quantify the costs and benefits of this approach on competition, innovation, and investment.

108. As explained above, today we are proposing that AWS–4 licensees meet three and seven-year performance obligations. We therefore seek comment on whether the public interest would be served by awarding AWS–4 licensees renewal expectancies where they maintain the level of service demonstrated at the seven year performance benchmark through the end of their license term, provided that they have otherwise complied with the Commission's rules and policies and the Communications Act during their license term. We also seek comment on whether AWS–4 licensees should obtain a renewal expectancy for subsequent license terms, if they continue to provide at least the level of service demonstrated at the seven year performance benchmark through the end of any subsequent license terms. Commenters should discuss and quantify the costs and benefits of this approach on competition, innovation, and investment.

109. Finally, consistent with the *700 MHz First Report and Order* and the *WRS Renewals NPRM and Order,* we propose to prohibit the filing of mutually exclusive renewal applications, and that if a license is not renewed, the associated spectrum would be returned to the Commission for reassignment. We seek comment on these proposals, including the costs and benefits of these proposals.

110. *Permanent Discontinuance of Operations.* We also request comment on the Commission's rules governing the permanent discontinuance of operations, which are intended to afford licensees operational flexibility to use their spectrum efficiently while ensuring that spectrum does not lay idle for extended periods. Under § 1.955(a)(3), an authorization will automatically terminate, without specific Commission action, if service is ''permanently discontinued.'' 47 CFR 1.955(a)(3). For the AWS–4 band, we propose to define ''permanently discontinued'' as a period of 180 consecutive days during which a licensee does not operate and does not serve at least one subscriber that is not affiliated with, controlled by, or related to the provider. We believe this definition strikes an appropriate balance between our twin goals of providing licensees operational flexibility while ensuring that spectrum does not lie fallow. Licensees would not be subject to this requirement until the date of the first performance requirement benchmark, which is proposed as 3 years from the license grant, so they will have adequate time to construct their terrestrial network. In addition, consistent with § 1.955(a)(3) of the Commission's rules, we propose that, if an AWS–4 licensee permanently discontinues service, the licensee must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 and requesting license cancellation. An authorization will automatically terminate without specific Commission action if service is permanently discontinued even if a licensee fails to file the required form.

5. Other Operating Requirements

111. Even though licenses in the AWS–4 band may be issued pursuant to one rule part, licensees in this band may be required to comply with rules contained in other parts of the Commission's rules by virtue of the particular services they provide. For example:

- Applicants and licensees would be subject to the application filing procedures for the Universal Licensing System, set forth in part 1 of our rules.
- Licensees would be required to comply with the practices and procedures listed in part 1 of our rules for license applications, adjudicatory proceedings, etc.
- Licensees would be required to comply with the Commission's environmental provisions, including § 1.1307.
- Licensees would be required to comply with the antenna structure provisions of part 17 of our rules.
- To the extent a licensee provides a Commercial Mobile Radio Service, such service would be subject to the provisions of part 20 of the Commission's rules, including 911/E911

and hearing aid-compatibility (HAC) requirements, along with the provisions in the rule part under which the license was issued. Part 20 applies to all CMRS providers, even though the stations may be licensed under other parts of our rules.

• The application of general provisions of parts 22, 24, 27, or 101 of our rules would include rules related to equal employment opportunity, *etc.*

112. We seek comment generally on any provisions in existing service-specific rules that may require specific recognition or adjustment to comport with the supervening application of another rule part, as well as any provisions that may be necessary in this other rule part to fully describe the scope of covered services and technologies. We seek comment on applying these rules to the spectrum that is the subject of this *AWS–4 Notice,* and specifically on any rules that would be affected by our proposal to apply elements of the framework of these parts, whether separately or in conjunction with other requirements.

113. We also seek comment generally on whether any conditions should govern the operation of a provider's network if it is granted a license to operate in these bands. What are the potential problems that may be associated with the Commission's adoption of any of these potential requirements, and how do they compare to the potential benefits?

6. Facilitating Access to Spectrum and the Provision of Service to Tribal Lands

114. The Commission currently has under consideration various provisions and policies intended to promote greater use of spectrum over Tribal lands. Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands, 76 FR 18476 (2011). We propose to extend any rules and policies adopted in that proceeding to any licenses that may be issued through competitive bidding in this proceeding. We seek comment on this proposal, including any costs and benefits of this proposal.

G. Relocation and Cost Sharing

1. Emerging Technologies Policies

115. Our Emerging Technologies (ET) procedures represent a broad set of tools that the Commission has used to aid the process of making spectrum available for new uses. Generally speaking, ET procedures are used when the Commission has made the decision that it is necessary to relocate incumbent licensees to introduce new services into a frequency band. The Commission sets a ''sunset date''—a date by which incumbent licensees may not cause interference to new band entrants. Prior to the sunset date, the new entrants may negotiate with incumbents to gain early entry into the band and, if necessary, may relocate the incumbents to comparable facilities. Because new entrants may have to relocate incumbents from a larger frequency range or greater geographic area than where the new entrants will operate, the Commission also typically establishes a companion set of cost sharing procedures. These procedures allow new entrants to be reimbursed a portion of their relocation expenses from other new entrants that benefit from the spectrum clearance. The specific relocation process we establish under the ET framework has varied for each frequency band, and has been based on the types of incumbent licensees and particular band characteristics. We discuss, below, the particular relocation and cost sharing procedures for the 2000–2020 MHz and 2180–2200 MHz bands.

2. Relocation and Cost-Sharing for 2000–2020 MHz

116. The lower portion of AWS–4 (2000–2020 MHz) is part of the 1990–2025 MHz band that the Commission reallocated from the Broadcast Auxiliary Service (BAS) to emerging technologies such as PCS, AWS, and MSS. Consistent with the relocation principles first established in the Commission's *Emerging Technologies* proceeding, each new entrant had an independent responsibility to relocate incumbent BAS licensees. Sprint Nextel (Sprint), which is licensed for 1990–1995 MHz, completed the BAS transition in 2010. Cost-sharing disputes between Sprint and the MSS licensees (for Sprint's clearing of 2000–2020 MHz) have been settled privately. In light of this, if the Commission assigns terrestrial licenses under part 27, do any relocation and cost-sharing issues for the 2000–2020 MHz band remain? In addition, should the Commission adopt either of the spectrum shift approaches that would include the 2020–2025 MHz block, we seek comment on any additional relocation or cost-sharing issues including this spectrum block would raise.

3. Relocation and Cost-Sharing for 2180–2200 MHz

117. *Relocation.* The upper portion of AWS–4 (2180–2200 MHz) is part of the 2160–2200 MHz band that the Commission reallocated from the Fixed Microwave Services (FS) to emerging technologies. Our licensing records show approximately 700 active FS licenses in this band. Most of these incumbents appear to be state or local governmental entities, utilities, railroads, and other businesses with FS links licensed in the Microwave Public Safety Pool (MW) or the Microwave Industrial/Business Pool (MG) for private, internal communication. FS links in the 2180–2200 MHz band typically are paired, for two-way operation, with FS links in the 2130–2150 MHz band. The Commission previously adopted relocation and cost-sharing rules for AWS–1 licensees in the 2110–2155 MHz band and we now propose to extend these rules to AWS–4 as discussed below.

118. Prior to initiating operations from any base or fixed station, AWS–1 licensees are required to coordinate their frequency usage with all co-channel and adjacent channel incumbents. If interference would occur, the AWS–1 licensee can initiate a mandatory negotiation period (two years for non-public safety, three years for public safety) during which each party must negotiate in good faith for the purpose of agreeing to terms under which the FS licensees would: (1) Relocate their operations to other fixed microwave bands or other media; or alternatively (2) accept a sharing arrangement with the AWS–1 licensee that may result in an otherwise impermissible level of interference to the FS operations. If no agreement is reached during the mandatory negotiation period, the AWS–1 licensee can initiate involuntary relocation procedures. We propose to revise these rules to apply them to AWS–4.

119. Under the emerging technologies policies, the Commission sunsets the relocation obligation owed by new licensees in the band to the incumbents. For example, MSS/ATC relocation obligations to FS in the 2180–2200 MHz band will sunset in December 2013 (ten years after the mandatory negotiation period began for MSS/ATC operators). Similarly, for the 2110–2150 MHz, 2160–2175 MHz and 2175–2180 MHz bands, the sunsets occur ''ten years after the first ET license is issued in the respective band.'' Thus, for AWS–1 licenses in the 2110–2155 MHz band, which were first-issued in 2006, the sunset for relocation obligations for FS incumbents in the 2130–2150 MHz band will occur in 2016. For AWS–4, we propose to sunset AWS–4 relocation obligations ten years after the first AWS–4 license is issued in the band. We recognize that the 2013 sunset date applies to 2180–2200 MHz for MSS/ATC but under our proposal to issue full-terrestrial licenses under part 27,

we believe it is appropriate to treat the AWS–4 band the same as other AWS bands by setting the sunset ten-years after we issue the first license in the band. Thus, we propose to revise § 101.79(a)(2) to include part 27 sunset rules in the 2180–2200 MHz band. Under this proposal, should the 2 GHz MSS licensee receive full terrestrial authority under part 27 of the Commission's rules, it would become the AWS–4 licensee responsible for relocating incumbent FS in the 2180–2200 MHz band. We seek comment on these proposals, including the costs and benefits of these proposals. We also propose to delete the reference to all Fixed and Mobile facilities operating on a secondary basis not later than December 9, 2013, in footnote NG168 in the U.S. Table of Frequency Allocations. Specifically, this would clarify that after the applicable sunset date grandfathered fixed microwave systems will be governed by the procedures in § 101.79. We seek comment on this proposal.

120. *Cost-sharing.* As noted above, FS links in the 2180–2200 MHz band typically are paired, for two-way operation, with FS links in the 2130–2150 MHz band. The Commission previously established a cost-sharing plan for MSS, MSS/ATC, and AWS–1 licensees in these paired bands. Briefly, for terrestrial stations (AWS and MSS/ATC), cost-sharing obligations are governed by §§ 27.1160 through 27.1174 except that MSS/ATC operators are not obligated to reimburse voluntarily relocating fixed microwave service incumbents in the 2180–2200 MHz band while AWS reimbursement and cost-sharing obligations relative to voluntarily relocating FMS incumbents are governed by § 27.1166. The cost-sharing plan is administered by AWS clearinghouses selected by the Commission's Wireless Telecommunications Bureau under delegated authority. We propose to extend to the AWS–4 band the cost-sharing rules adopted for AWS–1 licensees. Under this proposal, the cost-sharing plan will sunset for AWS–4 licensees on the same date on which the relocation obligation sunsets. We also propose conforming amendments to parts 27 and 101 to include AWS–4 under the relocation and cost-sharing rules generally and to delete references to MSS/ATC. We seek comment on these proposals, including the costs and benefits of these proposals.

H. Ancillary Terrestrial Components in the 2 GHz MSS Band

121. In order to provide more efficient and intensive use of the 2 GHz MSS band, we are proposing herein to authorize terrestrial operations under part 27 of the Commission's rules for the AWS–4 band. If we ultimately adopt this proposal, we must consider the disposition of the current ATC regulations and authorizations in this band. We believe that, if we assign part 27 rights pursuant to a license modification under section 316 of the Communications Act, authorizing both terrestrial operations and ATC operations in the 2 GHz MSS band would be redundant and confusing to operators. With changing circumstances in the 2 GHz MSS band, we believe that the ATC regulations would no longer be the best framework for development of terrestrial mobile broadband in this band. Accordingly, we believe that eliminating the ATC rules for this band will best encourage terrestrial broadband deployment in the 2 GHz MSS band. We therefore propose to eliminate the ATC regulations in the 2 GHz MSS band and request comment on this proposal, including associated costs and benefits. In addition, because we are proposing to eliminate the ATC regulations in the 2 GHz band, we propose to delete footnote NG168 from the U.S. Table of Frequency Allocations. We seek comment on this proposal.

III. Notice of Inquiry: 2 GHZ Extension Band

122. In this *Notice of Inquiry (NOI),* we seek comment on a variation of the band plan proposed above. This alternative approach poses greater complexities with respect to coordination among existing users and any new licensees. However, provided these barriers could be overcome, it could release a greater quantity of usable spectrum into the marketplace, reduce the need for guard bands to protect against harmful interference, and extend the existing PCS and AWS bands. We therefore invite comment on this alternative band plan and its associated coordination and license assignment challenges. Because we do not intend that this Notice of Inquiry should impede the timely implementation of the proposed AWS–4 service, we also invite comment as to whether this alternative band plan could be realized as a subsequent step to that proposal.

123. For purposes of facilitating discussion, and to avoid confusion with the foregoing AWS–4 proposal, we refer to this alternative as the ''2 GHz Extension Band Concept.'' The concept incorporates the NTIA proposal to reallocate the 1695–1710 MHz band from Federal to commercial use. It also builds upon the record generated in the Spectrum Task Force's comprehensive examination of opportunities to make additional spectrum available for mobile broadband use in the 2 GHz band.

124. Several assumptions inform the 2 GHz Extension Band Concept:

- The proposed ''fast track'' reallocation band (1695–1710 MHz) could become an extension to the existing AWS uplink band, although without a readily-available downlink pairing candidate.
- Together, AWS–3 and the upper portion of the AWS–2 J block (2155–2170 MHz) could become an extension to the existing AWS downlink band.
- The existing MSS downlink band (2180–2200 MHz) could further extend the existing AWS downlink band.
- The existing MSS uplink band requires separation from the PCS downlink band to prevent uplink/downlink interference issues between the MSS band and broadband PCS spectrum. This ''zoning issue'' currently hinders use of the upper portion of the AWS–2 H block (1995–2000 MHz), as well as a portion of the MSS uplink band itself (*e.g.,* 2000–2010 MHz).
- Extension of existing bands (*i.e.,* PCS and AWS) may enable greater economies of scale—and therefore lower costs, increased interoperability, and greater technology availability—as compared to the creation of an all-new terrestrial band (*i.e.,* AWS–4).

We seek comment on the validity of these assumptions, and any associated costs and benefits. We emphasize that these are assumptions only for purposes of exploring the 2 GHz Extension Band Concept. The Commission has not made any determination of fact, one way or the other, with regard to these assumptions.

125. The 2 GHz Extension Band Concept would involve the creation of two new blocks of spectrum, PCS-Extension and AWS-Extension, totaling 65 megahertz of usable bandwidth. A 35 megahertz AWS-Extension block would consist of the existing MSS downlink band at 2180–2200 MHz paired on the uplink with the NTIA fast track band at 1695–1710 MHz. A 30 megahertz PCS-Extension block (which could be subdivided into smaller blocks) would consist of the existing MSS uplink band at 2000–2020 MHz, combined with the lower portion of the AWS–2 J block at 2020–2025 MHz and the upper portion of the AWS–2 H block at 1995–2000 MHz, all of which would be converted to downlink use. We note that the AWS-Extension would abut the 2155–2180 MHz frequencies (AWS–3 and the upper portion of AWS–2 J block) and would not affect their disposition from a licensing and auction perspective. We

seek comment on the technical viability and the economic costs and benefits of this 2 GHz Extension Band Concept as presented or with modifications as commenters deem appropriate.

126. The 2 GHz Extension Band Concept would necessitate severing the existing 2000–2020 MHz pairing from 2180–2200 MHz, spectrum for which there is an existing licensee. It may be appropriate, therefore, to consider moving that existing licensee from its currently assigned uplink spectrum in the 2000–2020 MHz band to 1695–1710 MHz. The resulting license would contain paired terrestrial spectrum of 1695–1710 MHz and 2180–2200 MHz. This would, however, likely result in the 2 GHz MSS licensee forgoing the mobile uplink portion of its existing satellite spectrum and thus converting its satellite spectrum to a one-way, satellite transmit, system (or needing to launch another satellite to provide MSS using 1695–1710 MHz (depending in part, on how the 1695–1710 MHz band is allocated)). We seek comment on this aspect of the Concept and the costs and benefits of this Concept on competition, innovation, and investment.

127. On June 28, 2010, a Presidential Memorandum was issued directing the Department of Commerce, working with the Commission, to identify and make available 500 megahertz of spectrum over the next ten years for expanded wireless broadband use. Memorandum for the Heads of Executive Departments and Agencies, Unleashing the Wireless Broadband Revolution, 75 FR 38387 (Jul. 1, 2010). NTIA performed a technical study and determined that the 1695–1710 megahertz band, with a limited number of exclusion zones to protect Federal meteorological satellite receive Earth stations, could be made available for wireless broadband. *See* An Assessment of the Near-Term Viability of Accomodating Wireless Broadband Systems in the 1675–1710 MHz, 1755–1780 MHz, 3500–3650MHz, and 4200–4220 MHz, 4380–4400 MHz Bands, U.S. Department of Commerce, 3–1 to 3–25, 5–1 to 5–2, and H–1 to H–5 (October 2010); *see also* Spectrum Task Force Requests Information on Frequency Bands Indentified By NTIA As Potential Broadband Spectrum, ET Docket No. 10–123, *Public Notice,* 24 FCC Rcd 3486 (2011). The 1695–1710 megahertz band has incumbent Federal and non-Federal users. We observe that the Middle Class Tax Relief and Job Creation Act of 2012 requires (1) that the Administration, within three years, ''begin the process of withdrawing or modifying the assignment'' to Federal stations operating within 15 megahertz between 1675 and 1710 MHz, Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, section 6401(a)(1)(A) and (2) that the Secretary of Commerce, within one year, ''submit to the President a report identifying 15 megahertz of spectrum between 1675 megahertz and 1710 megahertz for reallocation from Federal use to non-Federal use.'' *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, section 6401(a)(3). We seek comment on how incumbent users might affect implementation of the 2 GHz Extension Band Concept and what steps, if any, might be taken to expedite availability of the band.

128. The 30 megahertz PCS-Extension block would be unpaired downlink spectrum. We seek comment on whether this spectrum could be paired with a matching uplink block. We also seek comment on the utility of licensing the spectrum as an unpaired downlink block. Commenters should discuss and quantify the costs and benefits for any approaches.

129. We seek comment on assignment procedures that could effectuate the 2 GHz Extension Band Concept. One possibility, as was suggested in the *2 GHz Public Notice,* might be to conduct an incentive auction for the MSS uplink band. However, the recently enacted Middle Class Tax Relief and Job Creation Act of 2012 appears to require that a reverse auction for spectrum (the first step in an incentive auction) involve at least two ''competing licensees'', whereas, following the *DISH Transfer Order* there is only one licensee in the 2 GHz MSS band. New DBSD Satellite Service G.P., Debtor-in-Possession, and TerreStar Licensee Inc., Debtor-In-Possession, Request for Rule Waivers and Modified Ancillary Terrestrial Component Authority, IB Docket Nos. 11–149, 11–150, *Order,* DA 12–332 (Mar. 2, 2012) (*DISH Transfer Order*). We seek comment on whether an incentive auction could be used to effectuate the 2 GHz Extension Band Concept.

130. Another possibility might be to relocate the existing MSS uplink into the 1695–1710 MHz band and to auction the resulting PCS-Extension band. Would an auction of 30 megahertz of downlink spectrum in an extended PCS band create more value than an auction of 15 megahertz of uplink spectrum adjacent in an extended AWS band? Commenters should quantify the value of this proposal. We note that the Middle Class Tax Relief and Job Creation Act of 2012 mandates an auction of 15 megahertz of spectrum in the 1675–1710 MHz band (to be identified by NTIA within one year). Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, section 6401. Does this provision preclude implementation of a ''swap'' with the 2 GHz MSS licensee?

131. Alternatively, we seek comment on any other assignment or license modification approaches to enabling the 2 GHz Extension Band Concept. Could the Commission implement the Concept as a section 316 license modification or pursuant to section 309 or other existing assignment authority?

132. Finally, were the Commission to implement the 2 GHz Extension Band Concept, it would result in leaving a single five megahertz block of former AWS–2 spectrum unpaired and unassigned—the AWS–2 lower H block at 1915–1920 MHz. We seek comment on the disposition of this spectrum block under this scenario. We observe that the Middle Class Tax Relief and Job Creation Act of 2012 requires the Commission to allocate this spectrum for commercial use and grant flexible use licenses through a system of competitive bidding unless the Commission determines that this spectrum band ''cannot be used without causing harmful interference to commercial mobile service licensees in the frequencies between 1930 megahertz and 1995 megahertz.'' Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, sections 6401(b)(2)(A), (b)(4). We seek comment on whether we would need to auction the AWS–2 lower H block or whether its use as a licensed band would lead to harmful interference in the upper PCS band. We observe that the record in response to the AWS–2 NPRM indicated raised concerns about harmful interference between the AWS–2 lower H block and the PCS band. Should the Commission conclude that the band ''cannot be used without causing harmful interference,'' the statute prohibits us from ''allocate[ing] such band for commercial use * * * or * * * grant[ing] licenses * * * for the use of such band.'' Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, sections 6401(b)(2)(A), (b)(4). In such an instance, we seek comment on whether the Commission should convert the 1915–1920 MHz band to unlicensed use, perhaps by adding it to the existing UPCS band. Unlicensed use, among other things, might provide additional capacity for devices using the ETSI DECT standard, including cordless phones and wireless microphones. What would be the most effective and efficient use of the ''orphaned'' five megahertz block? Commenters should discuss and quantify the costs and benefits of alternative proposals for the AWS–2 lower H block.

IV. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose

133. The proceedings this *AWS–4 Notice and NOI* initiate 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 rule § 1.1206(b). In proceedings governed by rule § 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.

B. Initial Regulatory Flexibility Analysis

134. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking and Notice of Inquiry (NPRM and NOI*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *NPRM and NOI* for comments. The Commission will send a copy of the *NPRM and NOI,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM and NOI* and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

135. The rapid adoption of smartphones and tablet computers, combined with deployment of high-speed 3G and 4G technologies, is driving more intensive use of America's mobile networks. This explosive growth is creating an urgent need for more network capacity and, in turn, for suitable spectrum. Responding to this demand for additional spectrum, the National Broadband Plan recommended the Commission undertake to make 500 megahertz of spectrum available for broadband use within ten years. The National Broadband Plan also recommended that 300 megahertz of this spectrum should be made available for mobile use within five years. The Commission has launched several proceedings to facilitate bringing spectrum suitable for wireless broadband to the commercial marketplace. More recently, Congress passed the Middle Class Tax Relief and Job Creation Act of 2012, which grants the Commission new authority to conduct ''voluntary incentive auctions,'' a key pillar of the National Broadband Plan's roadmap to bring more spectrum online for broadband.

136. In this *NPRM and NOI,* we seek to increase the nation's supply of spectrum for mobile broadband by removing unnecessary barriers to flexible use of spectrum currently assigned to the Mobile Satellite Service (MSS) in the 2 GHz band. This *NPRM and NOI* directly follows on the 2 GHz Band Co-Allocation Order, in which the Commission laid the predicate for full terrestrial use of the 2 GHz MSS band. In proposing terrestrial service rules for the band, which include technical rules to protect against harmful interference, licensing rules to establish geographic license areas and spectrum block sizes, and performance requirements to promote robust buildout, we advance toward enabling widespread deployment in the band. We do so by proposing service, technical, assignment, and licensing rules for this spectrum that generally follow the Commission's part 27 rules that generally govern flexible use terrestrial wireless service. These proposals are designed to provide for flexible use of this spectrum by allowing licensees to choose their type of service offerings, to encourage innovation and investment in mobile broadband use in this spectrum, and to provide a stable regulatory environment in which broadband deployment would be able to develop through the application of standard terrestrial wireless rules. Additionally, the Notice of Inquiry seeks input on potential ways to free up additional valuable spectrum to address the Nation's growing demand for mobile broadband spectrum.

2. Legal Basis

137. The proposed action is authorized pursuant to sections 1, 2, 4(i), 201, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, 332 and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, 332, and 333.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

138. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

139. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a

population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

140. *Satellite Telecommunications and All Other Telecommunications.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

141. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 512 Satellite Telecommunications firms operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

142. The second category, *i.e.,* ''All Other Telecommunications,'' 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.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

143. *Satellite Telecommunications/ Mobile Satellite Service Licensees.* Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have $15 million or less in annual revenues. This industry comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications. Currently, the Commission's records show that there are 31 entities authorized to provide voice and data MSS in the United States. The Commission does not have sufficient information to determine which, if any, of these parties are small entities. The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services.

144. However, the U.S. Census publishes data about Satellite Telecommunications generally, and this data may well be relevant to the estimate of the number of voice and data MSS. Census data for 2007 indicate that 512 satellite telecommunications firms operated during that year. Of that 512, 290 received annual receipts of $10.0 million or less. Eighteen firms received annual receipts of between $10.0 million and $24,999,999 and 30 received annual receipts of $25.0 million or more. Since the Census data does not distinguish between MSS and other types of satellite communications companies, it cannot be known precisely, based on Census data, how many of the 31 authorized MSS firms are small. However, since the majority of all satellite telecommunications companies were small under the applicable standard, a limited inference is possible that some of the 31 MSS firms are small. Since it is possible that some MSS companies are small entities affected by this Notice of Proposed Rulemaking and Notice of Inquiry, we therefore include them in this section of the IFRFA.

145. *Wireless Telecommunications Carriers (except satellite).* The *NPRM and NOI* proposes to apply various Commission policies and rules to terrestrial service in the MSS bands. We cannot predict who may in the future become a licensee or lease spectrum for terrestrial use in these bands. In general, any wireless telecommunications provider would be eligible to become an Advanced Wireless Service licensee or lease spectrum from the MSS or AWS licensees. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. 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 this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. 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.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

146. The projected reporting, recordkeeping, and other compliance requirements resulting from the *NPRM* will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The revisions the Commission adopts should benefit small entities by giving them more information, more

flexibility, and more options for gaining access to valuable wireless spectrum.

147. Applicants for AWS–4 licenses will be required to file license applications using the Commission's automated Universal Licensing System (ULS). ULS is an online electronic filing system that also serves as a powerful information tool that enables potential licensees to research applications, licenses, and antennae structures. It also keeps the public informed with weekly public notices, FCC rulemakings, processing utilities, and a telecommunications glossary. AWS–4 licensees must submit long-form license applications through ULS using Form 601, FCC Ownership Disclosure Information for the Wireless Telecommunications Services using FCC Form 602, and other appropriate forms.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

148. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed 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.''

149. The proposal to license the AWS–4 bands under Economic Areas (EA) geographic size licenses will provide regulatory parity with other AWS bands that are licensed on an EA basis, such as AWS–1 licenses. Additionally, assigning AWS–4 in EA geographic areas would allow AWS–4 licensees to make adjustments to suit their individual needs. EA license areas are small enough to provide spectrum access opportunities for smaller carriers. EA license areas also nest within and may be aggregated up to larger license areas that have been used by the Commission for other services, such as Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) for those seeking to create larger service areas. Depending on the licensing mechanism we adopt, licensees may adjust their geographic coverage through auction or through secondary markets. This proposal should enable AWS–4 providers, or any entities, whether large or small, providing service in other AWS bands to more easily adjust their spectrum to build their networks pursuant to individual business plans.

150. This *NPRM and NOI* makes several proposals to protect entities operating in nearby spectrum bands from harmful interference, which may include small entities. The technical rules proposed in section III.B of the *NPRM and NOI* are based on the rules for AWS–1 spectrum, with specific additions or modifications designed to protect broadband PCS services operating in the 1930–1995 MHz band, as well as future services operating in the 2020–2025 MHz band, and to protect Federal operations in the 2200–2290 MHz band from harmful interference from AWS–4 base stations. The technical analyses contained in the section III.B of the *NPRM and NOI* also proposes that no additional rule modifications to protect other spectrum bands are necessary, which may help minimize the impact on any small entities—both existing and potential small entities that may seek to provide services using AWS–4 spectrum—by streamlining regulations for operations in these spectrum bands.

151. The *NPRM and NOI* proposals pertaining to how AWS–4 licenses will be assigned includes a focus on the cost and benefits such proposals would have on innovation, investment, and competition. While recognizing the 2 GHz MSS license holder's existing rights, the *NPRM and NOI* proposes to grant terrestrial authority to operate in the AWS–4 band to the current 2 GHz MSS licensee pursuant to a license modification. The *NPRM and NOI* further proposes that in certain alternative scenarios the Commission would allow the filing of applications for the terrestrial rights to the 2000–2020 MHz and 2180–2200 MHz band. In the event mutually exclusive applications were accepted, the Commission would use competitive bidding to assign terrestrial rights, as required by section 309(j) of the Communications Act of 1934, as amended. To assist small entities in competitive bidding, the *NPRM and NOI* proposes to employ part 1 rules such as governing competitive bidding design, designated entity preferences, and unjust enrichment. Furthermore, the *NPRM and NOI* proposes to assign exclusive geographic area licenses for terrestrial use of the AWS–4 band, and that this spectrum would be used for purposes similar to those for which the AWS–1 band is used. As such, the *NPRM and NOI* proposes to establish small business size standards and bidding credits that were adopted in the AWS–1 band. Specifically, the *NPRM and NOI* proposes to define a small business as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a very small business as an entity with average gross revenues for the proceeding three years not exceeding $15 million. Additionally, the *NPRM and NOI* proposes bidding credits for both small and very small businesses, as set forth in the standardized schedule in part 1 of the Commission's rules. Providing small businesses and very small businesses with bidding credits may help such entities acquire spectrum. In addition, included in the *NPRM and NOI* is a proposal that, in the event a licensee's authority to operate terminates, terrestrial spectrum rights would become available for reassignment of any AWS–4 spectrum through the competitive bidding process. We believe these proposals will provide an economic benefit to small entities by making it easier for small entities to acquire spectrum or access to spectrum in these bands.

152. The *NPRM and NOI* also proposes to provide AWS–4 licensees with the flexibility to provide any fixed or mobile service that is consistent with the allocations for this spectrum, which is consistent with other spectrum allocated or designated for licensed fixed and mobile services, *e.g.,* AWS–1. The *NPRM and NOI* further proposes to license this spectrum under the Commission's market-oriented part 27 rules. These proposals include applying the Commission's secondary market policies and rules to all transactions involving the use of AWS–4 bands for terrestrial services, which will provide greater predictability and regulatory parity with bands licensed for terrestrial mobile broadband service. This proposal should make it easier for AWS–4 providers to enter secondary market arrangements involving terrestrial use of their spectrum. The secondary market rules apply equally to all entities, whether small or large. As a result, we believe that this proposal will provide an economic benefit to small entities by making it easier for entities, whether large or small, to enter into secondary market arrangements for AWS–4 spectrum.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

153. None.

V. Ordering Clauses

154. Accordingly, it is ordered, pursuant to sections 1, 2, 4(i), 201, 301,

302, 303, 307, 308, 309, 310, 316, 319, 324, 332 and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, 332, and 333 that this *Notice of Proposed Rulemaking and Notice of Inquiry* are hereby adopted.

155. It is further ordered that notice is hereby given of the proposed regulatory changes described in the *AWS–4 Notice,* and that comment is sought on these proposals.

156. It is further ordered that the Initial Regulatory Flexibility Analysis is adopted.

157. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Parts 1, 2, and 101

Radio, Reporting and recordkeeping requirements.

47 CFR 25 and 27

Communications common carriers, Radio.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 2, 25, 27, and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

2. Amend § 1.949 by adding paragraph (c) to read as follows:

§ 1.949 Application for renewal of license.

* * * * *

(c) *Renewal Showing.* An applicant for renewal of a geographic-area authorization in the 2000–2020 MHz and 2180–2200 MHz service bands must make a renewal showing, independent of its performance requirements, as a condition of renewal. The showing must include a detailed description of the applicant's provision of service during the entire license period and address:

(1) The level and quality of service provided by the applicant (*e.g.,* the population served, the area served, the number of subscribers, the services offered);

(2) The date service commenced, whether service was ever interrupted, and the duration of any interruption or outage;

(3) The extent to which service is provided to rural areas;

(4) The extent to which service is provided to qualifying tribal land as defined in § 1.2110(f)(3)(i); and

(5) Any other factors associated with the level of service to the public.

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

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

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

4. Amend § 2.106 in the Table of Frequency Allocations, as follows:

a. Page 36 is revised.

b. In the list of non-Federal Government (NG) Footnotes, footnote NG168 is removed.

The revision reads as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F			1980-2025	NG177	
				2000-2020 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	Satellite Communications (25)
2010-2025 FIXED MOBILE 5.388A 5.388B 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389E	2010-2025 FIXED MOBILE 5.388A 5.388B 5.388		2020-2025 FIXED MOBILE NG177	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) 5.391 5.392 US90 US222 US346 US347 US393	2025-2110 FIXED NG118 MOBILE 5.391 5.392 US90 US222 US346 US347 US393	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2120 FIXED MOBILE US252	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)
2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth) 5.388	2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2200	2120-2180 FIXED MOBILE NG153 NG178	
	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389E				
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F				2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25) Wireless Communications (27)

BILLING CODE 6712–01–C

PART 25—SATELLITE COMMUNICATIONS

5. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

6. Amend § 25.143 by revising paragraphs (i) and (k) to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz mobile-satellite service and 2 GHz mobile-satellite service.

* * * * *

(i) *Incorporation of ancillary terrestrial component base stations into a 1.6/2.4 GHz mobile-satellite service network.* Any licensee authorized to construct and launch a 1.6/2.4 GHz system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

* * * * *

(k) *Aircraft.* ATC mobile terminals must be operated in accordance with 25.136(a). All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 1610–1626.5 MHz/2483.5–2500 MHz bands shall bear the following statement in a conspicuous location on the device: ''This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft.''

7. Amend § 25.149 by revising the section heading and paragraph (a)(1) introductory text, removing and reserving paragraphs (a)(2)(i), (b)(1)(i), and (b)(5)(i), and revising paragraphs (d) and (e) to read as follows:

§ 25.149 Application requirements for ancillary terrestrial components in the mobile-satellites service networks operating in the 1.5/1.6 GHz and 1.6/2.4 GHz mobile-satellite service.

(a) * * *

(1) ATC shall be deployed in the forward-band mode of operation whereby the ATC mobile terminals transmit in the MSS uplink bands and the ATC base stations transmit in the MSS downlink bands in portions of the 1626.5–1660.5 MHz/1525–1559 MHz bands (L-band) and the 1610–1626.5 MHz/2483.5–2500 MHz bands (Big LEO band).

* * * * *

(d) Applicants for an ancillary terrestrial component authority shall demonstrate that the applicant does or will comply with the provisions of § 1.924 of this chapter and § 25.203(e) through (g) and with § 25.253 or § 25.254, as appropriate, through certification or explanatory technical exhibit.

(e) Except as provided for in paragraph (f) of this section, no application for an ancillary terrestrial component shall be granted until the applicant has demonstrated actual compliance with the provisions of paragraph (b) of this section. Upon receipt of ATC authority, all ATC licensees must ensure continued compliance with this section and § 25.253 or § 25.254, as appropriate.

* * * * *

§ 25.252 [Removed and Reserved].

8. Remove and reserve § 25.252.

9. Amend § 25.255 by revising the section heading as follows:

§ 25.255 Procedures for resolving harmful interference related to operation of ancillary terrestrial components operating in the 1.5/1.6 GHz and 1.6/2.4 GHz bands.

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

10. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

11. Amend § 27.1 by adding paragraph (b)(10) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(10) 2000–2020 MHz and 2180–2200 MHz.

* * * * *

12. Amend § 27.2 by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 27.2 Permissible communications.

(a) Miscellaneous wireless communications services. Except as provided in paragraph (b) or (d) of this section and subject to technical and other rules contained in this part, a licensee in the frequency bands specified in § 27.5 may provide any services for which its frequency bands are allocated, as set forth in the non-Federal Government column of the Table of Allocations in § 2.106 of this chapter (column 5).

* * * * *

(d) *2000–2020 MHz and 2180–2200 MHz bands.* Operators in the 2000–2020 MHz and 2180–2200 MHz bands may not provide the mobile-satellite service under the provisions of this part; rather, mobile-satellite service shall be provided in a manner consistent with part 25 of this chapter.

13. Amend § 27.4 by revising the definition in ''Advanced wireless service (AWS)'' to read as follows:

§ 27.4 Terms and definitions.

* * * * *

Advanced Wireless Service (AWS). A radiocommunication service licensed pursuant to this part for the frequency bands specified in § 27.5(h) or § 27.5(j).

* * * * *

14. Amend § 27.5 by adding paragraph (j) to read as follows:

§ 27.5 Frequencies.

* * * * *

(j) 2000–2020 MHz and 2180–2200 MHz bands. The following frequencies are available for licensing pursuant to this part in the 2000–2020 MHz and 2180–2200 MHz (AWS–4) bands:

(1) Two paired channel blocks of 10 megahertz each are available for assignment as follows:

Block A: 2000–2010 MHz and 2190–2200 MHz; and

Block B: 2010–2020 MHz and 2180–2190 MHz.

(2) [Reserved].

15. Amend § 27.6 by adding paragraph (i) to read as follows:

§ 27.6 Service areas.

* * * * *

(i) *2000–2020 MHz and 2180–2200 MHz bands.* AWS service areas for the 2000–2020 MHz and 2180–2200 MHz bands are based on Economic Areas (EAs) as defined in paragraph (a) of this section.

16. Amend § 27.13 by adding paragraph (i) to read as follows:

§ 27.13 License period.

* * * * *

(i) *2000–2020 MHz and 2180–2200 MHz bands.* Authorizations for the 2000–2020 MHz and 2180–2200 MHz bands will have a term not to exceed ten years from the date of issuance or renewal.

17. Amend § 27.14 by revising the first sentence of paragraphs (a), (f), and (k), and adding paragraph (q) to read as follows:

§ 27.14 Construction requirements; Criteria for renewal.

(a) AWS and WCS licensees, with the exception of WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands,

Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, Block D in the 758–763 MHz and 788–793 MHz bands, Block A in the 2305–2310 MHz and 2350–2355 MHz bands, Block B in the 2310–2315 MHz and 2355–2360 MHz bands, Block C in the 2315–2320 MHz band, and Block D in the 2345–2350 MHz band, and with the exception of AWS licensees holding authorizations in the 2000–2020 MHz and 2180–2200 MHz bands, must, as a performance requirement, make a showing of ''substantial service'' in their license area within the prescribed license term set forth in § 27.13. * * *

* * * * *

(f) Comparative renewal proceedings do not apply to WCS licensees holding authorizations for the 698–746 MHz, 747–762 MHz, and 777–792 MHz bands and AWS licensees holding authorizations for the 2000–2020 MHz and 2180–2200 MHz bands. * * *

* * * * *

(k) WCS and AWS licensees holding authorizations in the spectrum blocks enumerated in paragraphs (g), (h), (i), or (q) of this section, including any licensee that obtained its license pursuant to the procedures set forth in paragraph (j) of this section, shall demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter. * * *

* * * * *

(q) The following provisions apply to any AWS licensee holding an authorization in the 2000–2020 MHz and 2180–2200 MHz bands (an ''AWS–4 licensee''):

(1) An AWS–4 licensee shall provide signal coverage and offer service within three (3) years from the date of the initial license to at least thirty (30) percent of the total population in the aggregate service areas that it has licensed in the 2000–2020 MHz and 2180–2200 MHz bands (''AWS–4 3-Year Buildout Requirement''). For purposes of this subpart, a licensee's total population shall be calculated by summing the population of each license authorization that a licensee holds in the 2000–2020 MHz and 2180–2200 MHz bands; and

(2) An AWS–4 licensee shall provide signal coverage and offer service within seven (7) years from the date of the initial license to at least to at least seventy (70) percent of the total population in each of its licensed areas (''AWS–4 7-Year Buildout Requirement'').

(3) If any AWS–4 licensee fails to establish that it meets the AWS–4 3-Year Buildout Requirement, all of the licensee's 2000–2020 MHz and 2180–2200 MHz band license authorizations, including, if the AWS–4 license was assigned pursuant to a license modification, any licensed under part 25 or any other part of these regulations, shall terminate automatically without Commission action.

(4) If any AWS–4 licensee fails to establish that it meets the AWS–4 7-Year Buildout Requirement for a particular license within seven (7) years of the date on which the original license was issued, that licensee's authorization for the entire EA shall terminate automatically without Commission action, and the license will become available for reassignment by the Commission.

(5) To demonstrate compliance with these performance requirements, licensees shall use the most recently available U.S. Census Data at the time of measurement and shall base their measurements of population served on areas no larger than the Census Tract level. The population within a specific Census Tract (or other acceptable identifier) will only be deemed served by the licensee if it provides signal coverage to and offers service within the specific Census Tract (or other acceptable identifier). To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may only include the population within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license.

(6) Failure by any AWS–4 licensee to meet the performance requirements in this paragraph (q) will result in forfeiture of the license and the licensee will be ineligible to regain it.

18. Amend § 27.15 by revising paragraph (d)(1)(i); adding paragraph (d)(1)(iii); revising paragraph (d)(2)(i); and adding paragraph (d)(2)(iii) to read as follows:

§ 27.15 Geographic partitioning and spectrum disaggregation.

* * * * *

(d) * * *

(1) * * *

(i) Except for WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands; and for licensees holding authorizations in the 2000–2020 MHz and 2180–2200 MHz bands; the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the partitioner and partitionee each certifies that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee subsequently fails to meet its substantial service requirement, its license will be subject to automatic cancellation without further Commission action. Under the section option, the partitioner certifies that it has met or will meet the substantial service requirement for the entire, pre-partitioned geographic service area. If the partitioner subsequently fails to meet its substantial service requirement, only its license will be subject to automatic cancellation without further Commission action.

* * * * *

(iii) For AWS–4 licensees holding authorizations in the 2000–2020 MHz and 2180–2200 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a geographic partitioning must individually meet any service-specific performance requirements (*i.e.,* construction and operation requirements). If a licensee, including a partionee, fails to meet any service-specific performance requirements on or before the required date, its authorization will terminate automatically on that date without further Commission action pursuant to § 27.14(q).

(2) * * *

(i) Except for WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands; and for licensees holding authorizations in the 2000–2020 MHz and 2180–2200 MHz bands; the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. Parties to disaggregation agreements have two options for

satisfying the construction requirements set forth in § 27.14. Under the first option, the disaggregator and disaggregatee each certifies that it will share responsibility for meeting the substantial service requirement for the geographic service area. If the parties choose this option and either party subsequently fails to satisfy its substantial service responsibility, both parties' licenses will be subject to forfeiture without further Commission action. Under the second option, both parties certify either that the disaggregator or the disaggregatee will meet the substantial service requirement for the geographic service area. If the parties choose this option, and the party responsible subsequently fails to meet the substantial service requirement, only that party's license will be subject to forfeiture without further Commission action.

* * * * *

(iii) For AWS licensees holding authorizations in the 2000–2020 MHz and 2180–2200 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a spectrum disaggregation must individually meet any service-specific performance requirements (*i.e.,* construction and operation requirements). If a licensee, including a disagregatee, fails to meet any service-specific performance requirements on or before the required date, its authorization will terminate automatically on that date without further Commission action pursuant to § 27.14(q).

19. Add § 27.17 to read as follows:

§ 27.17 Discontinuance of Service in the 2000–2020 MHz and 2180–2200 MHz bands.

(a) *Termination of Authorization.* A licensee's authorization in the 2000–2020 MHz and 2180–2200 MHz bands will automatically terminate, without specific Commission action, if it permanently discontinues service after meeting the AWS–4 3-Year Buildout Requirement as specified in § 27.14 of the Commission's rules.

(b) Permanent discontinuance of service is defined as 180 consecutive days during which an AWS–4 licensee does not operate or, in the case of a commercial mobile radio service provider, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.

(c) *Filing Requirements.* A licensee of the 2000–2020 MHz and 2180–2200 MHz bands that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

20. Amend § 27.50 by:

a. Revising paragraph (d) introductory text;

b. Revising (d)(1) introductory text and redesignating paragraphs (d)(1)(A) and (B) as paragraphs (d)(1)(i) and (ii);

c. Revising paragraph (d)(2) introductory text and redesignating paragraphs (d)(2)(A) and (B) as paragraphs (d)(2)(i) and (ii);

d. Revising paragraph (d)(4); and

e. Adding paragraph (d)(7).

The revisions and addition read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(d) The following power and antenna height requirements apply to stations transmitting in the 1710–1755 MHz, 2110–2155 MHz, 2000–2020 MHz, and 2180–2200 MHz bands:

(1) The power of each fixed or base station transmitting in the 2110–2155 MHz or 2180–2200 MHz bands and located in any county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, is limited to:

* * * * *

(2) The power of each fixed or base station transmitting in the 2110–2155 MHz or 2180–2200 MHz bands and situated in any geographic location other than that described in paragraph (d)(1) is limited to:

* * * * *

(4) Fixed, mobile, and portable (hand-held) stations operating in the 1710–1755 MHz and 2000–2020 MHz bands are limited to 1 watt EIRP. Fixed stations operating in these bands are limited to a maximum antenna height of 10 meters above ground. Mobile and portable stations operating in these bands must employ a means for limiting power to the minimum necessary for successful communications.

* * * * *

(7) A licensee operating a base or fixed station in the 2180–2200 MHz band utilizing a power greater than 1640 watts EIRP and greater than 1640 watts/MHz EIRP must be coordinated in advance with all AWS licensees authorized to operate on adjacent frequency blocks in the 2180–2200 MHz band.

* * * * *.

21. Amend § 27.53 by revising paragraph (h) introductory text to read as follows:

§ 27.53 Emission limits.

* * * * *

(h) Except as provided in section 27.1134(e) for the 2180–2200 MHz band, for operations in the 1710–1755 MHz, 2110–2155 MHz, 2000–2020 MHz, and 2180–2200 MHz bands, the power of any emission outside a licensee's frequency block shall be attenuated below the transmitter power (P) by at least $43 + 10 \log_{10}(P)$ dB. For operations in the 2000–2020 MHz band, the power of any emissions between 1995 MHz and 2000 MHz shall be attenuated below the transmitter power (P) by at least a value as determined by linear interpolation from $70 + 10 \log_{10}(P)$ dB at 1995 MHz to $43 + 10 \log_{10}(P)$ dB at 2000 MHz.

* * * * *

22. Amend § 27.55 by revising paragraph (a)(1) to read as follows:

§ 27.55 Power strength limits.

(a) * * *

(1) 2110–2155, 2180–2200, 2305–2320 and 2345–2360 MHz bands: 47 dBμV/m.

* * * * *

23. Amend § 27.57 by revising paragraph (c) to read as follows:

§ 27.57 International coordination.

* * * * *

(c) Operation in the 1710–1755 MHz, 2110–2155 MHz, 2000–2020 MHz, and 2180–2200 MHz bands is subject to international agreements with Mexico and Canada.

Subpart L—1710–1755 MHz, 2110–2155 MHz, 2000–2020 MHz, and 2180–2200 MHz bands

24. Revise the heading of subpart L to read as set forth above.

25. Add § 27.1103 to read as follows:

§ 27.1103 2000–2020 MHz and 2180–2200 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for 2000–2020 MHz and 2180–2200 MHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in 47 CFR part 1, subpart Q will apply unless otherwise provided in this subpart.

26. Add § 27.1104 to read as follows:

§ 27.1104 Designated Entities in the 2000–2020 MHz and 2180–2200 MHz bands.

Eligibility for small business provisions:

(a)(1) A small business is an entity that, together with its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship, has average annual gross revenues not exceeding $40 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship, has average annual gross revenues not exceeding $15 million for the preceding three years.

(b) Bidding credits: A winning bidder that qualifies as a small business as defined in this section or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business as defined in this section or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter.

27. Revise § 27.1131 to read as follows:

§ 27.1131 Protection of part 101 operations.

All AWS licensees, prior to initiating operations from any base or fixed station, must coordinate their frequency usage with co-channel and adjacent channel incumbent, Part 101 fixed-point-to-point microwave licensees operating in the 2110–2155 MHz and 2180–2200 MHz bands. Coordination shall be conducted in accordance with the provisions of § 24.237 of this chapter.

28. Amend § 27.1134 by adding paragraph (e) to read as follows:

§ 27.1134 Protection of Federal Government operations.

* * * * *

(e) *Protection of Federal operations in the 2200–2290 MHz band.*

(1) [Reserved.]

(2) [Reserved.]

29. Add § 27.1136 to read as follows:

§ 27.1136 Protection of mobile satellite services in the 2000–2020 MHz and 2180–2200 MHz bands.

An AWS licensee of the 2000–2020 MHz and 2180–2200 MHz bands must accept any interference received from duly authorized mobile satellite service operations in these bands. Any such AWS licensees must protect mobile satellite service operations in these bands from harmful interference.

30. Amend § 27.1160 by revising the first sentence to read as follows:

§ 27.1160 Cost-sharing requirements for AWS.

Frequencies in the 2110–2150 MHz and 2160–2200 MHz bands listed in § 101.147 of this chapter have been reallocated from Fixed Microwave Services (FMS) to use by AWS (as reflected in § 2.106) of this chapter. ***

31. Amend § 27.1166 by revising paragraphs (a)(1), (b) introductory text, (b)(2), and (f) to read as follows:

§ 27.1166 Reimbursement under the Cost-Sharing Plan.

(a) * * *

(1) To obtain reimbursement, an AWS relocator must submit documentation of the relocation agreement to the clearinghouse within 30 calendar days of the date a relocation agreement is signed with an incumbent. In the case of involuntary relocation, an AWS relocator must submit documentation of the relocated system within 30 calendar days after the end of the relocation.

* * * * *

(b) *Documentation of expenses.* Once relocation occurs, the AWS relocator, or the voluntarily relocating microwave incumbent, must submit documentation itemizing the amount spent for items specifically listed in § 27.1164(b), as well as any reimbursable items not specifically listed in § 27.1164(b) that are directly attributable to actual relocation costs. Specifically, the AWS relocator, or the voluntarily relocating microwave incumbent must submit, in the first instance, only the uniform cost data requested by the clearinghouse along with a copy, without redaction, of either the relocation agreement, if any, or the third party appraisal described in (b)(1), if relocation was undertaken by the microwave incumbent. AWS relocators and voluntarily relocating microwave incumbents must maintain documentation of cost-related issues until the applicable sunset date and provide such documentation upon request, to the clearinghouse, the Commission, or entrants that trigger a cost-sharing obligation. If an AWS relocator pays a microwave incumbent a monetary sum to relocate its own facilities, the AWS relocator must estimate the costs associated with relocating the incumbent by itemizing the anticipated cost for items listed in § 27.1164(b). If the sum paid to the incumbent cannot be accounted for, the remaining amount is not eligible for reimbursement.

* * * * *

(2) *Identification of links.* The AWS relocator, or the voluntarily relocating microwave incumbent, must identify the particular link associated with appropriate expenses (*i.e.,* costs may not be averaged over numerous links). Where the AWS relocator, or voluntarily relocating microwave incumbent relocates both paths of a paired channel microwave link (*e.g.,* 2110–2130 MHz with 2160–2180 MHz and 2130–2150 MHz with 2180–2200 MHz), the AWS relocator, or voluntarily relocating microwave incumbent must identify the expenses associated with each paired microwave link.

* * * * *

(f) *Reimbursement for Self-relocating FMS links in the 2130–2150 MHz and 2180–2200 MHz bands.* Where a voluntarily relocating microwave incumbent relocates a paired microwave link with paths in the 2130–2150 MHz and 2180–2200 MHz bands, it may not seek reimbursement from MSS operators, but is entitled to partial reimbursement from the first AWS beneficiary, equal to fifty percent of its actual costs for relocating the paired link, or half of the reimbursement cap in § 27.1164(b), whichever is less. This amount is subject to depreciation as specified § 27.1164(b). An AWS licensee who is obligated to reimburse relocation costs under this rule is entitled to obtain reimbursement from other AWS beneficiaries in accordance with §§ 27.1164 and 27.1168. For purposes of applying the cost-sharing formula relative to other AWS licensees that benefit from the self-relocation, the fifty percent attributable to the AWS entrant shall be treated as the entire cost of the link relocation, and depreciation shall run from the date on which the clearinghouse issues the notice of an obligation to reimburse the voluntarily relocating microwave incumbent. The cost-sharing obligations for MSS operators in the 2180–2200 MHz band are governed by § 101.82 of this chapter.

32. Amend § 27.1168 by revising paragraphs (a) introductory text, (a)(2), (a)(3) introductory text, (a)(3)(ii), and (b) to read as follows:

§ 27.1168 Triggering a reimbursement obligation.

(a) The clearinghouse will apply the following test to determine when an AWS entity has triggered a cost-sharing obligation and therefore must pay an AWS relocator, MSS relocator, or a voluntarily relocating microwave incumbent in accordance with the formula detailed in § 27.1164:

* * * * *

(2) An AWS relocator, MSS relocator or a voluntarily relocating microwave incumbent has paid the relocation costs of the microwave incumbent; and

(3) The AWS or MSS entity is operating or preparing to turn on a fixed base station at commercial power and

the fixed base station is located within a rectangle (Proximity Threshold) described as follows:

* * * * *

(ii) If the application of the Proximity Threshold Test indicates that a reimbursement obligation exists, the clearinghouse will calculate the reimbursement amount in accordance with the cost-sharing formula and notify the AWS entity of the total amount of its reimbursement obligation.

(b) Once a reimbursement obligation is triggered, the AWS entity may not avoid paying its cost-sharing obligation by deconstructing or modifying its facilities.

33. Revise § 27.1170 to read as follows:

§ 27.1170 Payment issues.

Prior to initiating operations for a newly constructed site or modified existing site, an AWS entity is required to file a notice containing site-specific data with the clearinghouse. The notice regarding the new or modified site must provide a detailed description of the proposed site's spectral frequency use and geographic location, including but not limited to the applicant's name and address, the name of the transmitting base station, the geographic coordinates corresponding to that base station, the frequencies and polarizations to be added, changed or deleted, and the emission designator. If a prior coordination notice (PCN) under § 101.103(d) of this chapter is prepared, AWS entities can satisfy the site-data filing requirement by submitting a copy of their PCN to the clearinghouse. AWS entities that file either a notice or a PCN have a continuing duty to maintain the accuracy of the site-specific data on file with the clearinghouse. Utilizing the site-specific data, the clearinghouse will determine if any reimbursement obligation exists and notify the AWS entity in writing of its repayment obligation, if any. When the AWS entity receives a written copy of such obligation, it must pay directly to the relocator the amount owed within 30 calendar days.

34. Revise § 27.1174 to read as follows:

§ 27.1174 Termination of cost-sharing obligations.

The cost-sharing plan will sunset for all AWS and MSS entities on the same date on which the relocation obligation for the subject AWS band (*i.e.,* 2110–2150 MHz, 2160–2175 MHz, 2175–2180 MHz, 2180–2200 MHz) in which the relocated FMS link was located terminates. AWS or MSS entrants that trigger a cost-sharing obligation prior to the sunset date must satisfy their payment obligation in full.

PART 101— FIXED MICROWAVE SERVICES

35. The authority citation for part 101 continues to read as follows:

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

36. Amend § 101.69 by revising paragraph (e) introductory text to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

* * * * *

(e) Relocation of FMS licensees by Mobile-Satellite Service (MSS) licensees will be subject to mandatory negotiations only.

* * * * *

37. Amend § 101.73 by revising paragraphs (a) and (d) introductory text to read as follows:

§ 101.73 Mandatory negotiations.

(a) A mandatory negotiation period may be initiated at the option of the ET licensee. Relocation of FMS licensees by Mobile Satellite Service (MSS) operators and AWS licensees in the 2110–2150 MHz and 2160–2200 MHz bands will be subject to mandatory negotiations only.

* * * * *

(d) *Provisions for Relocation of Fixed Microwave Licensees in the 2110–2150 and 2160–2200 MHz bands.* A separate mandatory negotiation period will commence for each FMS licensee when an ET licensee informs that FMS licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the FMS licensee with comparable facilities defined as facilities possessing the following characteristics:

* * * * *

38. Amend § 101.79 by revising paragraphs (a) introductory text and (a)(2) to read as follows:

§ 101.79 Sunset provisions for licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

(a) FMS licensees will maintain primary status in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands unless and until an ET licensee requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset. Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA TSB 10–F (for terrestrial-to-terrestrial situations) or TIA TSB 86 (for MSS satellite-to-terrestrial situations) or any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis. The date that the relocation rules sunset is determined as follows:

* * * * *

(2) For the 2180–2200 MHz band, for MSS/ATC December 8, 2013 (*i.e.,* ten years after the mandatory negotiation period begins for MSS/ATC operators in the service), and for ET licensees authorized under part 27 ten years after the first part 27 license is issued in the band.

* * * * *

39. Amend § 101.82 by revising paragraphs (a) and (d) to read as follows:

§ 101.82 Reimbursement and relocation expenses in the 2110–2150 MHz and 2160–2200 MHz bands.

(a) Reimbursement and relocation expenses for the 2110–2130 MHz and 2160–2200 MHz bands are addressed in §§ 27.1160–27.1174.

* * * * *

(d) *Cost-sharing obligations among terrestrial stations.* For terrestrial stations (AWS), cost-sharing obligations are governed by §§ 27.1160 through 27.1174 of this chapter; provided, however, that MSS operators are not obligated to reimburse voluntarily relocating FMS incumbents in the 2180–2200 MHz band. (AWS reimbursement and cost-sharing obligations relative to voluntarily relocating FMS incumbents are governed by § 27.1166 of this chapter).

* * * * *

[FR Doc. 2012–8405 Filed 4–16–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

RIN 0648–XT12

Petition To List 83 Species of Coral as Threatened or Endangered Under the Endangered Species Act (ESA)

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

ACTION: Notice of availability of reports, request for information, and notice of public listening sessions and scientific workshops.

SUMMARY: We, NMFS, issue this document to request information from the public on a Status Review Report and a draft Management Report we prepared in response to a petition from the Center for Biological Diversity (CBD) to list 83 coral species as threatened or endangered under the Endangered Species Act (ESA) and to notify the public about future public listening sessions and scientific workshops on this topic. The Status Review Report examines the biology of, threats to, and extinction risk of 82 coral species, while the draft Management Report describes existing regulatory mechanisms and ongoing conservation efforts to manage and conserve these species throughout the Caribbean and Indo-Pacific. Collectively, these two reports constitute the best available scientific and commercial information that we have compiled to date on the 82 species of coral under review.

The review of the status of these species is a major undertaking because of the large number and geographically dispersed nature of coral species involved. Therefore, with the approval of a federal court, NMFS and CBD have agreed to an extension of the previously approved deadline for issuing the 12-month finding on this petition. We are using this extension to allow additional opportunity for the public to provide us with information that may further inform our 12-month finding as to whether the petitioned action is or is not warranted. In addition, we will hold two public listening sessions and two public scientific workshops, during which we will explain the evaluation process and the public and experts will have opportunity to provide any additional relevant information on this matter.

DATES: Comments on the documents and additional papers, reports, and information must be received by July 31, 2012. Dates, times, and location information for public listening sessions and scientific workshops will be announced in a subsequent **Federal Register** document.

ADDRESSES: You may obtain a copy of the Status Review Report of 82 Candidate Coral Species Petitioned Under the U.S. Endangered Species Act (Status Review Report) and the draft Management Report for 82 Corals Status Review under the Endangered Species Act: Assessment of Existing Regulatory Mechanisms and Conservation Efforts (Management Report) by visiting the internet at: *http://www.nmfs.noaa.gov/stories/2012/04/4_13_12corals_petition.html.*

The two reports may also be viewed, by appointment, during regular business hours, at: NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd. Suite 1110, Honolulu, HI 96814; or NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

You may submit information, identified by 0648–XT12, on the Status Review Report and the draft Management Report by any of the following methods:

- *Electronic Submission:* Submit all electronic information via electronic mail to *NMFS.82Corals@noaa.gov.*
- *Mail:* Submit written comments to Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd. Suite 1110, Honolulu, HI 96814, Attn: 82 coral species; or to Assistant Regional Administrator for Protected Resources, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; Attn: 82 coral species.
- *Fax:* 808–973–2941; Attn: Protected Resources Regulatory Branch Chief, or 727–824–5309; Attn: Assistant Regional Administrator for Protected Resources.

FOR FURTHER INFORMATION CONTACT: Chelsey Young, NMFS, Pacific Islands Regional Office, 808–944–2137; Lance Smith, NMFS, Pacific Island Regional Office, 808–944–2258; Jennifer Moore, NMFS, Southeast Regional Office, 727–824–5312; or Marta Nammack, NMFS, Office of Protected Resources, 301–427–8469.

SUPPLEMENTARY INFORMATION:

Background

This request for information is not part of any rulemaking action, but is issued to assist us in determining the most appropriate course of action on a petition we received to list 83 species of coral in the Caribbean and Indo-Pacific as threatened or endangered under the ESA. On February 10, 2010, we published a 90-day finding on the petition in the **Federal Register**, concluding that the petition presented substantial scientific or commercial information indicating that listing may be warranted for 82 of the 83 petitioned species (75 FR 6616). The 90-day finding was followed by a public comment period, during which we received approximately 400 public comments.

We also established a Biological Review Team (BRT) composed of Federal scientists to examine the status of the 82 coral species in question and evaluate, based on the best available scientific information, the extinction risk for each species. The BRT was not charged with making recommendations for listing. In September 2011, after being peer-reviewed by the Center for Independent Experts, we finalized the Status Review Report, which is a technical document approximately 450 pages in length (excluding references). Separately, NMFS' Pacific Islands and Southeast Regional offices drafted a Management Report (approximately 130 pages, excluding references and an appendix) to evaluate management activities affecting coral species across their range, including existing regulatory mechanisms and conservation efforts. Together, these two reports constitute the best available scientific and commercial information that we have compiled to date on the 82 species of coral under review.

On September 27, 2011, CBD sued us challenging our failure to make a 12-month finding as to the 82 coral species. Shortly thereafter, we entered into a stipulated settlement agreement with CBD in which we agreed to submit our 12-month finding to the **Federal Register** for publication on or before April 15, 2012. The U.S. District Court for the Northern District of California (court) entered this stipulated settlement agreement on November 8, 2011. Subsequent discussions between CBD and us resulted in the court modifying the deadline to require us to submit our 12-month finding to the **Federal Register** on or before December 1, 2012. The court also ordered that we publish the Status Review Report and draft Management Report for public comment on or before April 15, 2012.

The response to the petition to list 83 coral species is one of the most complex listing processes we have ever undertaken. Given the petition's scale and the precedential nature of the issues, we have determined that our decision-making process would be

strengthened if we take additional time to allow the public, non-federal experts, non-governmental organizations, state and territorial governments, and academics to review and provide information related to the Status Review Report and draft Management Report prior to issuing our 12-month finding. We will hold listening sessions and scientific workshops in the Southeast region and Pacific Islands region and will then consider the information gathered through these venues and through written submissions to inform our 12-month finding and, if appropriate, a proposed listing rule.

We expect that this outreach effort will allow the public to understand more clearly the context in which this petition is being evaluated and the basis and rationale supporting our 12-month finding. We also expect this process will ensure that any additional relevant scientific information available is brought to our attention. This document is not part of the usual rulemaking process and is unique to NMFS' response to the petition to list 83 coral species. Thus, the additional outreach conducted in this case does not establish precedent for any other ESA-listing process.

Information Solicited

We are particularly interested in receiving information on the following:

(1) Relevant scientific information collected or produced since the completion of the Status Review Report (2011) or any relevant scientific information not included in the Report; and

(2) Relevant management information not included in the draft Management Report, such as descriptions of regulatory mechanisms for greenhouse gas emissions globally, and for local threats in the 83 foreign countries and the U.S. (Florida, Hawaii, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and Northern Mariana Islands), where the 82 coral species collectively occur.

Although this action is not a rulemaking, we will accept information received in response to this solicitation and will take such information into account, along with the information received on the 90-day finding (75 FR 6616; February 10, 2010), when we make our 12-month finding on whether CBD's petitioned action is warranted. If you have submitted information during the previous comment period, there is no need to re-submit it. We request that all information submitted be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. If possible, comments should include the heading of the relevant section of the Status Review Report or draft Management Report. Please submit any information to the **ADDRESSES** listed above.

Public Listening Sessions and Scientific Workshops

In addition to soliciting input from the public on the Status Review Report and draft Management Report, we will hold one public listening session and one scientific workshop in each of the two relevant regions: the Southeast and Pacific Islands, during which we will explain the evaluation process and the public and experts will have opportunity to provide any additional relevant information on this matter. Dates, times, and locations of these meetings will be announced in a subsequent **Federal Register** document and on our Web site at: *http://www.nmfs.noaa.gov/stories/2012/04/4_13_12corals_petition.html*.

We have not yet published a proposed listing rule for the 82 coral species. Therefore, we cannot consider comments on whether a determination should be made as to whether some or all of the petitioned corals are an endangered or threatened species. The ESA also prohibits us from taking economic or social impacts into consideration in any listing decisions. Accordingly, we cannot consider comments on these matters.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 12, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–9243 Filed 4–16–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–XA975

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries in the Bering Sea and Aleutian Islands

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

ACTION: Notice; intent to prepare an environmental impact statement, request for comments.

SUMMARY: NMFS, in consultation with the North Pacific Fishery Management Council (Council), announces its intent to prepare an environmental impact statement (EIS) on Steller sea lion protection measures for the Bering Sea and Aleutian Islands management area (BSAI) groundfish fisheries, in accordance with the National Environmental Policy Act of 1969. The proposed action would restrict groundfish fishing in the BSAI to ensure the groundfish fisheries are not likely to result in jeopardy of continued existence or adverse modification or destruction of designated critical habitat (JAM) for the western distinct population segment (DPS) of Steller sea lions. The western DPS of Steller sea lions is listed as endangered under the Endangered Species Act (ESA) and NMFS must ensure that the groundfish fisheries are not likely to result in JAM for this DPS. NMFS intends to work with stakeholders to develop fisheries restrictions that avoid the likelihood of JAM and minimize the potential economic impact on the fishing industry to the extent practicable while meeting the requirements of the ESA. The analysis in the EIS will determine the impacts to the human environment resulting from this proposed action and the alternatives. In scoping for the EIS, NMFS will accept written comments from the public to determine the issues of concern; the appropriate range of management alternatives; and the direct, indirect, and cumulative impacts. NMFS, in coordination with the Council, will conduct a public meeting at the October 2012 Council meeting to inform the public of this proposed action and alternatives, present issues and potential impacts, and gather public comment.

DATES: Written comments must be received by 5 p.m. Alaska Standard Time (AST), October 15, 2012.

ADDRESSES: You may submit comments on this action, identified by NOAA–NMFS–2012–0013, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0013 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn:

Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

• *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the 2010 environmental assessment and biological opinion prepared for the Steller sea lion protection measures are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/sslpm/*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, (907) 586–7228.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the United States has exclusive fishery management authority over all living marine resources found within the exclusive economic zone. The management of these marine resources, with the exception of certain marine mammals and birds, is vested in the Secretary of Commerce. The Council has the responsibility to prepare fishery management plans for those marine resources off Alaska requiring conservation and management. Management of the Federal groundfish fishery in the BSAI is carried out under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The FMP, its amendments, and implementing regulations (found at 50 CFR part 679) are developed in accordance with the requirements of the Magnuson-Stevens Act and other applicable Federal laws and executive orders, notably the National Environmental Policy Act (NEPA) and the ESA.

Alaska Groundfish Fisheries Steller Sea Lion Protection Measures

Steller sea lion protection measures have been used to manage the groundfish fisheries since 1999 (64 FR 3437, January 22, 1999) and have been annually revised in 2000 through 2004. Details of these rules are available at the NMFS Alaska Region Web site at *http://www.alaskafisheries.noaa.gov/sustainablefisheries/sslpm/*. The protection measures have been used to mitigate the potential adverse effects of the groundfish fisheries on Steller sea lions and on their designated critical habitat. Steller sea lions may be incidentally taken in fishing gear, may be disturbed by fishing activities, and may compete with groundfish fisheries for important prey species. Atka mackerel, Pacific cod, and pollock are important Steller sea lion prey species that also are harvested in the groundfish fisheries. The protection measures temporally and spatially disperse Atka mackerel, Pacific cod, and pollock harvest to reduce potential impacts from the groundfish fisheries on Steller sea lions and on their designated critical habitat. Spatial protection measures include closures of areas to groundfish fishing near Steller sea lion haulouts and rookeries, and in foraging areas, to reduce potential interactions with Steller sea lions and fishing vessels and to reduce potential impacts on prey resources in locations important to Steller sea lions. Harvest of pollock, Pacific cod, and Atka mackerel also is temporally dispersed through seasonal apportionments of the annual total allowable catch for these species. The details of the current Steller sea lion protection measures for the Alaska groundfish fisheries are available on the NMFS Alaska Region Web site at *http://www.alaskafisheries.noaa.gov/sustainablefisheries/sslpm/*.

In 2010, NMFS completed an ESA section 7 consultation on the effects of the Alaska groundfish fisheries on ESA-listed species, including the western DPS of Steller sea lions, and on designated critical habitat. Based on the best available commercial and scientific information, the consultation resulted in a biological opinion (2010 Biop) that found that the Steller sea lion protection measures implemented in the BSAI since 2003 could not ensure that the groundfish fisheries were not likely to result in JAM for the western DPS of Steller sea lions. A reasonable and prudent alternative (RPA) to the protection measures was included in the 2010 Biop to ensure the groundfish fisheries were not likely to result in JAM. This RPA was implemented by an interim final rule as the 2011 Steller sea lion protection measures (75 FR 77535, December 13, 2010, corrected 75 FR 81921, December 29, 2010).

The 2011 Steller sea lion protection measures primarily affected the Pacific cod and Atka mackerel fisheries in the Aleutian Islands subarea and were in addition to previous measures adopted since 2004. The 2010 Biop determined that the weight of evidence indicated that fisheries may remove prey species important to Steller sea lions, which may affect the reproduction and numbers of Steller sea lions and adversely modify the conservation value of their critical habitat in Statistical Areas 543, 542, and 541. Competition with fisheries for prey is likely one component of an intricate suite of natural and anthropogenic factors affecting Steller sea lion numbers and reproduction. While natural factors may be contributing, NMFS must ensure that actions authorized by NMFS are not likely to appreciably reduce the likelihood of survival and recovery of the western DPS of Steller sea lions, which is required to avoid the likelihood of JAM.

The RPA was developed based on performance standards that address the effects of the groundfish fisheries—and the population status and foraging behavior of Steller sea lions—in the Aleutian Islands subarea. The details of these standards are in the 2010 Biop (see **ADDRESSES**). The RPA was structured to mitigate effects of the fishery in locations where Steller sea lion abundance continues to decline (Statistical Areas 543, 542, and 541). One of the performance standards requires that the protection measures be commensurate with the rate of Steller sea lion population declines, with more stringent measures in those locations with greater population declines. The RPA meets this standard by applying more fisheries restrictions in Area 543, where Steller sea lions have the highest population decline, and applying fewer fisheries restrictions in Areas 542 and 541, where Steller sea lion population decline is less than in Area 543.

Implementation of the RPA is expected to minimize local competition between Steller sea lions and the Atka mackerel and Pacific cod fisheries in Area 543. This is intended to improve foraging success and prey availability for juvenile and adult Steller sea lions, which is expected to lead to higher survival and natality rates. The RPA also reduces the competitive overlap between Steller sea lions and fisheries for Atka mackerel and Pacific cod in Areas 542 and 541. This is intended to improve foraging success and prey availability for Steller sea lions, particularly adult females with dependent young in winter, which is expected to lead to higher natality rates and survival.

Litigation on the 2011 Steller Sea Lion Protection Measures

On March 5, 2012, NMFS was ordered by the U.S. District Court of Alaska to prepare an EIS on the Steller sea lion protection measures implemented in January 2011 (75 FR 77535, December 13, 2010, corrected 75 FR 81921, December 29, 2010). The Court's decision and order for this action are available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/sslpm/eis/.* The Court ordered NMFS to prepare an EIS for the Steller sea lion protection measures because NMFS failed to provide sufficient environmental information for informed public comment to the agency decision-making and failed to provide for adequate public participation when it prepared the environmental assessment for this action in 2010 (see **ADDRESSES**). Two areas identified by the Court as scientifically controversial were the use of single species rather than multispecies models for groundfish fisheries stock assessments and the effects of the groundfish fisheries on the availability of Steller sea lion prey resources.

The Court ordered the completion of the final EIS by March 2, 2014. The Court also ordered that any subsequent rulemaking for the BSAI groundfish fisheries as a result of the EIS must be completed by January 1, 2015.

Proposed Action

The proposed action is a set of protection measures that would ensure groundfish fishing in the BSAI is not likely to result in JAM for the western DPS of Steller sea lions. Spatial and temporal dispersion of the harvest of Steller sea lion prey species would be included in the protection measures to reduce potential adverse impacts. The protection measures should ensure the groundfish fisheries are not likely to result in JAM while minimizing economic impact on fishery participants to the extent practicable.

Alternative Management Measures

The EIS will evaluate a range of alternative management measures for the BSAI groundfish fisheries with focus on the Aleutian Islands groundfish fisheries management. Alternatives may be developed based on the elements identified here, and those developed through the public scoping and Council processes. Possible alternatives could be constructed from one or more of the following alternatives, and public suggestions on the specific features for these alternatives are requested:

1. The status quo alternative to continue implementation of the 2011 Steller sea lion protection measures and management of the groundfish fisheries under the FMP.

2. An alternative recommended by the Council that is intended to maintain protection of Steller sea lions while reducing fishing restrictions imposed by the 2011 Steller sea lion protection measures, particularly for the Pacific cod and Atka mackerel fisheries in the Aleutian Islands subarea.

3. An alternative that provides precautionary, additional protection to Steller sea lions in the Aleutian Islands beyond those provided by the 2011 Steller sea lion protection measures.

4. An alternative that changes the 2011 Steller sea lion protection measures based on information since development of the 2010 biological opinion, and may be more or less restrictive than status quo.

The Council will recommend alternatives for analysis in the EIS. The Council's Steller Sea Lion Mitigation Committee may review the latest scientific information regarding the biology of Steller sea lions and fisheries interaction, and may develop alternative Steller sea lion protection measures for the Aleutian Islands groundfish fisheries for the Council's consideration. NMFS may develop additional alternatives to ensure that a reasonable range of alternatives is analyzed and that its responsibilities under the Magnuson-Stevens Act, the ESA, and other applicable law are met.

Preliminary Identification of Issues

A principal objective of the scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in the EIS. The analysis will evaluate the impacts of the alternatives for all resources, species, and issues that may be directly or indirectly affected by the Steller sea lion protection measures for the BSAI groundfish fisheries. The following components of the biological and physical environment may be evaluated: (1) Target and non-target fish stocks, forage fish, and prohibited species (including Pacific halibut, Pacific salmon, and crab); (2) species listed under the ESA and their critical habitat; (3) seabirds; (4) marine mammals; (5) habitat; and (6) the ecosystem. The target species analysis would include examination of the use of single species and multispecies stock assessment models. The latest information regarding interactions between the groundfish fisheries and Steller sea lions for prey resources would be examined in the EIS. The direct, indirect, and cumulative impacts on the environmental components would be based on the environmental assessment prepared for the 2011 Steller sea lion protection measures with revisions based on the alternatives and issues identified in scoping, and the best available information during the development of the EIS.

The baseline used to compare the impacts of the alternatives on the human environment is recommended to be the human environment in the BSAI between 2004 and 2010. This time period represents the condition of the environment before the implementation of the 2011 Steller sea lion protection measures, includes the most complete data set of fisheries catch information, and provides a reasonable time period to compare potential effects of all alternatives, including status quo, which has only been implemented for 1 year. Public review and comments on the baseline for the analysis during the scoping period are welcome.

Social and economic impacts caused by changes to Steller sea lion protection measures also would be considered in terms of the effects on the following groups of individuals: (1) Those who participate in harvesting groundfish (particularly Pacific cod and Atka mackerel in the Aleutian Islands subarea); (2) those who process and market Pacific cod and Atka mackerel and their products; (3) those who consume Pacific cod and Atka mackerel products; (4) those who rely on living marine resources caught in the management area, particularly Pacific cod, Atka mackerel and Steller sea lions; (5) those who benefit from commercial, subsistence, and recreational fisheries and Steller sea lion harvest; and (6) fishing communities, including Adak, AK.

Public Involvement

Scoping is an early and open process for determining the scope of issues, alternatives, and impacts to be addressed in an EIS, and for identifying the significant issues related to the proposed action. A principal objective of the scoping and public involvement process is to identify a range of reasonable management alternatives that, with adequate analysis, will delineate critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative. Through this notice, NMFS is notifying the public that an EIS and decision-making process for this proposed action have been initiated so that interested or affected people may participate and contribute to the final decision.

NMFS is seeking written public comments on the scope of issues, potential impacts, and alternatives that should be considered for the Steller sea lion protection measures. Written comments will be accepted at the address above (see **ADDRESSES**). Written comments should be as specific as possible to be the most helpful. Written comments received during the scoping process, including the names and addresses of those submitting them, will be considered part of the public record for this proposal and will be available for public inspection.

The public is invited to participate at the Council and any Steller Sea Lion Mitigation Committee meetings where the latest scientific information regarding Steller sea lions and fisheries interactions with the BSAI groundfish fisheries is reviewed and alternative Steller sea lion protection measures may be developed and evaluated. During the scoping period, and in conjunction with the October 2012 Council meeting, a public meeting will be held where this proposed action and alternatives, issues, and potential impacts will be discussed. The public may participate by submitting written comments or by testifying at these public meetings. Notice of future Council and Steller Sea Lion Mitigation Committee meetings, and any other public meetings where these issues will be discussed, will be published in the **Federal Register** and posted on the Internet at *http://alaskafisheries.noaa.gov/sustainablefisheries/sslpm/eis/.* Please visit this Web site for more information on this EIS and for guidance on submitting effective public comments.

Dated: April 12, 2012.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–9244 Filed 4–16–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BB42

Fisheries of the Exclusive Economic Zone Off Alaska and Pacific Halibut Fisheries; Observer Program

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

ACTION: Notice of public hearings.

SUMMARY: NMFS will publish a proposed rule in the **Federal Register** to restructure the funding and deployment system for observers in North Pacific groundfish and halibut fisheries via Amendment 86 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 76 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The public comment period for the subject proposed rule will close 60 days after date of publication of the proposed rule in the **Federal Register**. We will hold public hearings to receive oral and written comments on the proposed regulations during the public comment period.

DATES: The meetings will be held in April and May, 2012. For specific dates and times, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meetings will be held in Seattle, WA, Newport, OR, and Juneau, AK. For specific locations, see **SUPPLEMENTARY INFORMATION.**

You may submit written comments, identified by FDMS Docket Number NOAA–NMFS–2011–0210, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''Submit a Comment'' icon, then enter NOAA–NMFS–2011–0210 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.
- Hand delivery to NMFS at one of the public hearings listed in this notice.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of the proposed rule to implement Amendment 86 to the BSAI FMP and Amendment 76 to the GOA FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

A copy of the proposed rule that will be published in the **Federal Register** is available on NMFS Alaska Region's Web page (*http://www.alaskafisheries.noaa.gov/sustainablefisheries/observers/default.htm*).

FOR FURTHER INFORMATION CONTACT: Brandee Gerke, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS will publish a proposed rule in the **Federal Register** to restructure the funding and deployment system for observers in the North Pacific groundfish and halibut fisheries via Amendment 86 to the BSAI FMP and Amendment 76 to GOA FMP. Per the requirements of MSA section 313, we will conduct three public hearings to inform interested parties of the proposed regulations and receive written and oral comments.

The proposed rule to implement Amendment 86 to the BSAI FMP and Amendment 76 to the GOA FMP was prepared under the authority of Section 313 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). MSA section 313 requires NMFS to conduct a public hearing in each state represented on the North Pacific Fishery Management Council (Council) for the purpose of receiving public comment on the proposed regulations. The states represented on the Council are Alaska, Oregon, and Washington.

Meeting Dates, Times, and Locations

We will conduct public hearings on the proposed regulations on the specific dates listed below:

- April 17, 2012; Pacific Daylight Time (PDT) 1 p.m. to 4 p.m., Seattle, WA.
- April 19, 2012, PDT 1 p.m. to 4 p.m., Newport, OR.
- May 2, 2012, Alaska Daylight Time 1 p.m. to 4 p.m., Juneau, AK.

The hearing locations are:

- Seattle, WA—NOAA Western Regional Center, Building 9 Auditorium, 7600 Sand Point Way NE., Bldg. 9, Seattle, WA 98115.
- Newport, OR—Hatfield Marine Science Center, Hennings Auditorium, 2030 SE. Marine Science Dr., Newport, OR 97365.
- Juneau, AK—Centennial Hall, Hickel Room, 101 Egan Drive, Juneau, AK 99801.

People wishing to make an oral statement for the record at a public hearing are encouraged to provide a written copy of their statement and present it to us at the hearing. If attendance at the public hearings is large, the time allotted for individual oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

There is no need to register for these hearings. Please be advised that a valid government-issued photo-identification will be required for entry through building security at the Seattle, WA, hearings.

Dated: April 12, 2012.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–9219 Filed 4–12–12; 4:15 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 74
Tuesday, April 17, 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

Forest Service

Black Hills National Forest Advisory Board

AGENCY: USDA Forest Service.

ACTION: Notice of cancellation of meetings of the Black Hills National Forest Advisory Board.

SUMMARY: The U. S. Department of Agriculture, Forest Service, Black Hills National Forest was required to cancel several meetings of the Black Hills National Forest Advisory Board (Board), while awaiting approval of the Board's re-charter package submitted to the Secretary, U.S. Department of Agriculture, during 2011. Meetings that were published in the **Federal Register**, Volume 75, Number 240, Wednesday, December 15, 2010, page 78209, and subsequently cancelled were scheduled for the following dates:

Wednesday, August 17, 2011 (Summer Field Trip);
Wednesday, September 21, 2011;
Wednesday, October 19, 2011;
Wednesday, November 16, 2011;
Wednesday, January 4, 2012.

A Decision Memorandum re-establishing the Black Hills National Forest Advisory Board was signed by the Secretary of the Department of Agriculture on February 1, 2012. The 2012 meeting schedule for the Board was published in the **Federal Register**, Volume 77, Number 34, Tuesday, February 21, 2012, pages 9889–9890.

FOR FURTHER INFORMATION CONTACT: Marie Curtin, Planning and Public Affairs, USDA, Forest Service, Black Hills National Forest by telephone at (605) 673–9324, by fax at (605) 673–9208, or by email at *mcurtin@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

Dated:April 9, 2012.

Craig Bobzien,

Forest Supervisor .

[FR Doc. 2012–9116 Filed 4–16–12; 8:45 am]

BILLING CODE 3410–11–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting; Notice of Meeting of the Broadcasting Board of Governors

DATE AND TIME: Friday, April 20, 2012, 10 a.m.

PLACE: Office of Cuba Broadcasting, 4201 NW. 77th Ave., Miami, FL 33166.

SUMMARY: The Broadcasting Board of Governors (BBG) will be meeting at the time and location listed above. At the meeting, the BBG will consider a resolution to thank Ambassador Kathleen Stephens for her service on the Board as the President's nominee to be Under Secretary has received Senate confirmation. The BBG will receive a status report on the consolidation transaction plan for BBG-sponsored grantees. The BBG will receive and consider a progress report from the Strategy and Budget Committee on the implementation of the BBG strategy and a report from the Governance Committee regarding proposed amendments to BBG By-Laws as well as the results of March 9 Governance Committee Meeting on employee morale and contractor issues. The BBG will receive an Asia trip report and a budget update. The BBG will receive reports from the International Broadcasting Bureau Director, the VOA Director, the Office of Cuba Broadcasting Director, and the Presidents of Radio Free Europe/Radio Liberty, Radio Free Asia, and the Middle East Broadcasting Networks.

The public may attend this meeting as seating capacity allows. Member of the public seeking to attend the meeting in person must register at *http://bbg.eventbrite.com/by* April 17. For more information, please contact BBG Public Affairs at (202) 203–4400; Email: *pubaff@bbg.gov.* This meeting is also available for public observation via streamed webcast, both live and on-demand, on the BBG's public Web site at *www.bbg.gov.*

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2012–9299 Filed 4–13–12; 11:15 am]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 257—Imperial County, CA; Site Renumbering Notice

Foreign-Trade Zone 257 was approved by the Foreign-Trade Zones Board on October 9, 2003 (Board Order 1286, 67 FR 72914, 12/09/2002). FTZ 257 currently consists of six ''sites'' totaling 3,897 acres within Imperial County and the city limits of Brawley, Calexico, Calipatria and El Centro, California. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering that separates certain non-contiguous sites for record-keeping purposes.

Under this revision, the site list for FTZ 257 will be as follows: *Site 1:* (597 acres)—Gateway of the Americas Industrial Park, State Route 7 and State Highway 98, Imperial County (formerly Site 1a); *Site 2:* (32 acres)—Airport Industrial Park, Jones Drive and Best Road with adjacent parcel on Duarte Street, Brawley (formerly Site 2a); *Site 3:* (242.62 acres)—Calexico International Airport, 254–256 E. Anza Road and Second Street and Airport Road (includes adjacent River parcels 12 and 13 from former Site 3b), Calexico (formerly Site 3a); *Site 4:* (104 acres)—Calipatria Airport Industrial Park and adjacent parcel, Main Street, International and Lyerly Roads, Calipatria; *Site 5:* (531 acres)—within the El Centro Community Redevelopment Agency project area (Danenberg Road, Dogwood Road and I–8), El Centro; *Site 6:* (3.46 acres)—Coppel Corporation, 503 Sarconi Road, Calexico; *Site 7:* (43 acres)—Imperial County Airport, State Highway 86 and Aten Road (formerly Site 1b), Imperial County; *Site 8:* (115 acres)—Drewry Warehousing complex, 340 West Ralph Road, Imperial County (formerly Site 1c); *Site 9:* (45 acres)—Luckey Ranch

Industrial Park, Best Road and Shank Road, Brawley (formerly Site 2b); *Site 10:* (78.11 acres)—Desert Real Estate parcels, Cole Road and Sunset Boulevard, Calexico (formerly part of Site 3b); *Site 11:* (35.47 acres)—Portico Industrial Park, Cole Road and Enterprise Boulevard, Calexico (formerly part of Site 3b); *Site 12:* (59.49 acres)—Kloke Tract, Cole Road, Portico Boulevard and Weakley Road, Calexico (formerly part of Site 3b); *Site 13:* (57.45 acres)—Las Palmas/Estrada Business Park, Estrada Boulevard and Arguelles Street, Calexico (formerly part of Site 3b); and, *Site 14:* (7.54 acres)—Calexico Industrial Park, 190 East Cole Road and 2360, 2420, 2430, 4360 M.L. King Avenue, Calexico (formerly part of Site 3b).

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov,* or (202) 482–0862.

Dated: April 11, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–9236 Filed 4–16–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Modification of Temporary Denial Order Making Temporary Denial of Export Privileges Applicable to Related Persons

Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran.

Zarand Aviation, a/k/a GIE Zarand Aviation, 42 Avenue Montaigne, 75008 Paris, France; and

112 Avenue Kleber, 75116 Paris, France.

Gatewick LLC, a/k/a Gatewick Freight & Cargo Services, a/k/a/ Gatewick Aviation Services, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates; and

P.O. Box 52404, Dubai, United Arab Emirates; and

Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates.

Pejman Mahmood Kosarayanifard, a/k/a Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates.

Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates; and

P.O. Box 52404, Dubai, United Arab Emirates; and

Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates.

Kerman Aviation, a/k/a GIE Kerman Aviation, 42 Avenue Montaigne 75008, Paris, France.

Sirjanco Trading, P.O. Box 8709, Dubai, United Arab Emirates.

Ali Eslamian, 4th Floor, 33 Cavendish Square, London, W1G0PW, United Kingdom; and

2 Bentinck Close, Prince Albert Road St. Johns Wood, London NW87RY, United Kingdom.

Mahan Air General Trading LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates.

Skyco (UK) Ltd., 4th Floor, 33 Cavendish Square, London, W1G 0PV, United Kingdom.

Equipco (UK) Ltd., 2 Bentinck Close, Prince Albert Road, London, NW8 7RY, United Kingdom.

Respondents.

Pursuant to Section 766.23 of the Export Administration Regulations, 15 CFR Parts 730–774 (2011) (''EAR'' or the ''Regulations''), including the provision on notice and an opportunity to respond, I hereby grant the request of the Office of Export Enforcement (''OEE'') to modify the February 15, 2012 Renewal Order Temporarily Denying the Export Privileges of Mahan Airways, Zarand Aviation, Gatewick LLC, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC and Ali Eslamian.[1] Specifically, I find it necessary to add the following persons as related persons in order to prevent evasion of the TDO:

Mahan Air General Trading LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates.

Skyco (UK) Ltd., 4th Floor, 33 Cavendish Square, London, W1G 0PV, United Kingdom.

Equipco (UK) Ltd., 2 Bentinck Close, Prince Albert Road, London, NW8 7RY, United Kingdom.

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement (''Assistant Secretary''), signed a TDO denying Mahan Airways' export privileges for a period of 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations. The TDO also named as denied persons Blue Airways, of Yerevan, Armenia (''Blue Airways of Armenia''), as well as the ''Balli Group Respondents,'' namely, Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd., all of the United Kingdom. The TDO was issued *ex parte* pursuant to Section 766.24(a), and went into effect on March 21, 2008, the date it was published in the **Federal Register**.[2]

On July 1, 2011, the TDO was modified by adding Zarand Aviation as a denied person in order to prevent an imminent violation involving an Airbus A310 aircraft owned by Zarand Aviation being operated on behalf of Mahan Airways in violation of the Regulations and the TDO. Additionally, the August 24, 2011 TDO Renewal Order added Kerman Aviation, Sirjanco Trading LLC, and Ali Eslamian to the TDO as denied persons in order to prevent evasion of the TDO given that they are related persons to Mahan Airways.

II. Addition of Related Persons

A. Legal Standard

Section 766.23 of the Regulations provides that ''[i]n order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders * * * .'' 15 CFR 766.23(a).

B. OEE's Request To Add Mahan Air General Trading LLC, Skyco (UK) Ltd., and Equipco (UK) Ltd. to the TDO via the Related Person Provision of Section 766.23 of the Regulations

OEE has requested that Mahan Air General Trading LLC, Skyco (UK) Ltd., and Equipco (UK) Ltd. be added as related persons to Mahan Airways, Zarand Aviation and/or Ali Eslamian, as further discussed below, in order to prevent evasion of the TDO. As noted above, each entity was provided written notice of OEE's intent to add them to the TDO pursuant to Section 766.23. No response was received from Mahan Air General Trading LLC. Skyco (UK) Ltd. and Equipco (UK) Ltd., as discussed further below, submitted written responses, through the same U.S.

[1] The February 15, 2012 TDO Renewal Order was published in the **Federal Register** on February 23, 2012. *See* 77 FR 10719.

[2] The TDO was subsequently renewed in accordance with Section 766.24(d) of the Regulations on September 17, 2008, March 16, 2009, September 11, 2009, March 9, 2010, September 3, 2010, February 25, 2011, August 24, 2011, and most recently on February 15, 2012. Each renewal order was published in the **Federal Register**. As of March 9, 2010, the Balli Group Respondents and Blue Airways were no longer subject to the TDO.

counsel, opposing their respective additions to the TDO.

C. The Evidence, Respondent's Contentions, and Findings Under Section 766.23

1. Mahan Air General Trading LLC

In accordance with Section 766.23 of the Regulations, OEE provided Mahan Air General Trading with notice, via a notice letter sent on January 27, 2012, of its intent to seek an order adding Mahan Air General Trading to the TDO as a related person to Mahan Airways and Zarand Aviation in order to prevent evasion of the TDO. No response has been received from Mahan Air General Trading.

Mahan Air General Trading's articles of incorporation list Mahan Airways' Managing Director, Hamid Arabnejad, as an owner. In addition, French corporate registration documents list Mahan Air General Trading as a Groupement D'interet Economique (''Economic Interest Group'') member of both Zarand Aviation and Kerman Aviation, entities which were added to the TDO on July 1, 2011 and August 24, 2011, respectively. Zarand Aviation and Kerman Aviation each owns an Airbus A310 aircraft [3] that bears the livery and logo of Mahan Airways and operates on flights into and out of Iran in violation of the Regulations and the TDO. After Zarand Aviation and Kerman Aviation were added to the TDO, both aircraft were de-registered in France and subsequently registered in Iran with, respectively, Iranian tail numbers EP–MHH and EP-MHI. Both aircraft remain active in Mahan Airways' fleet.

Mahan Air General Trading also shares the same Dubai address and fax number with Sirjanco Trading LLC, another denied party related to Mahan Airways that acquires and resells aircraft parts and components. Sirjanco is owned in part by Ghulam Redha Khodra Mahmoudi a/k/a Gholemreza Mahmoudi, a Mahan Airways' shareholder and its Vice-President for Business Development.

In sum, I find that Mahan Air General Trading is related to Mahan Airways and Zarand Aviation by ownership, control, position of responsibility, and/or other connection in the conduct of trade or business, and that it is necessary to add Mahan Air General Trading to the TDO in order to prevent evasion of the TDO.

2. Skyco (UK) Ltd. (''Skyco'')

In accordance with Section 766.23 of the Regulations, OEE provided Skyco with notice, via a notice letter send on January 27, 2012, of its intent to seek an order adding Skyco to the TDO as a related person to Mahan Airways in order to prevent evasion of the TDO. Skyco opposed its addition to the TDO, via a letter dated February 17, 2012. Skyco, through counsel, argues that it is not related to Mahan Airways within the meaning of Section 766.23 and that BIS has not demonstrated that its addition is needed to prevent evasion of the TDO.

As discussed in the August 24, 2011 TDO Renewal Order, a copy of which accompanied OEE's notice letter, Skyco's corporate registration lists Gholemreza Mahmoudi, who is discussed above, and Ali Eslamian, a named party under the TDO since August 24, 2011, as directors of Skyco. Mr. Eslamian also is listed as Skyco's corporate secretary.

Mr. Mahmoudi's positions in both Mahan Airways and Skyco establish that Skyco is a related person to Mahan under Section 766.23 of the Regulations. In addition, Mr. Eslamian previously has admitted during testimony in litigation in the United Kingdom between Mahan Airways and the Balli Group that he formed Skyco with Mahan Airways' Managing Director Hamid Arabnejad and Mr. Mahmoudi to carry out transactions on behalf of Mahan Airways.[4] Mr. Eslamian admitted to OEE in July 2009 and again in June 2011 that Skyco buys and sells aircraft, aircraft engines, and other aviation related services, and that Skyco was established to supply Mahan with parts that Mahan otherwise couldn't get because of the embargo.

Skyco's response to the notice letter does not address these relationships between it and Mahan Airways, whether as to or via Mr. Mahmoudi or Mr. Eslamian. Skyco generally contends, instead, that it is not related to Mahan Airways and that it has not been provided an opportunity to challenge OEE's ''information that suggests that Skyco may evade the TDO.'' Skyco Response Letter, at 1–2.

Contrary to these assertions, OEE has demonstrated that Skyco is a related person to Mahan Airways and Skyco's due process argument is unavailing. The relationship between Skyco and Mahan Airways is demonstrated by evidence provided by Mr. Eslamian or is information within Skyco's possession, custody, or control or otherwise known or available to Skyco. This evidence alone provides sufficient reason to believe that the TDO should be made applicable to Skyco to prevent evasion of the TDO. There is, of course, additional evidence indisputably showing that Skyco was created and has acted or operated for the purpose of facilitating Mahan Airways' activities in violation of the Regulations and the TDO. This evidence similarly has been provided by Skyco via Mr. Eslamian or was previously known or available to Skyco. Moreover, with or without that piece of evidence, my determination would here would be the same.

Based on the above, I find that Skyco is related to Mahan Airways by position of responsibility, control, and/or other connection in the conduct of trade, and that it is necessary to add Skyco to the TDO as a related person in order to prevent evasion of the Order.

Skyco also has argued that BIS has never suggested that Skyco may have violated the Regulations and that the interview Mr. Eslamian provided to BIS Special Agents on June 23, 2011, and other asserted cooperation undermines OEE's TDO request. Skyco Response Letter, at 1–2. The former contention is belied by, inter alia, the August 24, 2011 and February 15, 2012 Renewal Orders. The latter contention seeks to challenge BIS's investigative judgment and prosecutorial discretion, and can also be read as an attempt, contrary to Section 766.24 of the Regulations, to indirectly challenge the August 24, 2011 and February 15, 2012 Renewal Orders. As such, the argument is not a proper basis of opposition under Section 766.23. To the extent it was deemed otherwise, I would reject the contention based on the record here. Indeed, among other things, the same cooperation argument has been made by Equipco based on the same meeting between Mr. Eslamian and the BIS Special Agents in June 2011. But neither Skyco nor Equipco, which share the same counsel, address the more recent activities led by Mr. Eslamian, as discussed in the February 15, 2012 Renewal Order and further discussed below, regarding the attempted acquisition of aircraft subject to the EAR in violation of the Regulations and the TDO.

3. Equipco (UK) Ltd. (''Equipco'')

In accordance with Section 766.23 of the Regulations, OEE provided Equipco

[3] The Airbus A310 aircraft are powered with U.S.-origin engines. The engines are subject to the EAR and classified under ECCN 9A991.d. The aircraft contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified as ECCN 9A991.b. The reexport of these aircraft to Iran would require U.S. Government authorization pursuant to Section 746.7 of the Regulations, as would the reexport of the aircraft engines.

[4] As discussed in the August 24, 2011 Renewal Order, this litigation related to the ownership of three of the U.S.-origin Boeing 747s that had been unlawfully reexported to Iran and led to the initial issuance of the TDO.

with notice, via a notice letter sent on January 27, 2012, of its intent to seek an order adding Equipco as a related person to Mahan Airways and/or Ali Eslamian in order to prevent evasion of the TDO. Equipco opposed its addition to the TDO, via a letter dated February 17, 2012. Equipco argues that it is not related to Mahan Airways within the meaning of Section 766.23, that Section 766.23 does not permit its addition to the TDO based on the fact that it is related to Mr. Eslamian, and that BIS has not demonstrated that its addition is needed to prevent evasion of the Order.

Equipco is owned and operated by Mr. Eslamian, and does not dispute that it is related to him. Equipco is represented by the same counsel as Skyco, as noted above, and makes essentially the same contentions as Skyco, except that it makes the additional argument that Section 766.23 does not permit its addition to the TDO based on its relationship with Mr. Eslamian.

I will not repeat in this section my discussion of the overlapping arguments made by Skyco and Equipco. As to Equipco's additional argument, Equipco contends that under Section 766.23, BIS must have evidence that the ''person is 'related to [the person or entity named in the existing TDO] by ownership, position of responsibility, affiliation or other connection in the conduct of trade or business * * * '.'' Equipco Response Letter, at 1 (bracketed text supplied by Equipco). Equipco does not explain how or why this contention supports its position, and in actuality the contention supports the contrary conclusion, that is, that BIS is not prohibited or precluded from adding Skyco to the TDO based on its relationship with Mr. Eslamian, a denied person under the TDO, simply because he was initially added to the TDO as a related person. Equipco's proposed interpretation would run counter to the purpose of Section 766.23, which is to prevent evasion of the TDO, whether by Mr. Eslamian or other persons or entities. That purpose would be undermined if parties to the TDO could effectively evade it by shifting their activities from one entity to another.

Moreover, the record here demonstrates that there is a connection in the conduct of trade or business between Equipco and Mahan Airways. As detailed in the February 15, 2012 TDO renewal order, Eslamian/Equipco engaged in negotiations with a Brazilian airline as recently as December 2011, in an attempt to acquire an aircraft engine and two Airbus A320 that are subject to the Regulations. In conversations with the Brazilian Airline, Eslamian stated that the items are being acquired on behalf of ''a very dear customer of another company of ours, Skyco UK Ltd.'' These negotiations continued after Eslamian's addition to the TDO on August 24, 2011, and demonstrate his willingness to use his company Equipco to carry out activities for or on behalf of denied persons in violation of the Regulations and the TDO. Eslamian remains positioned to participate in or facilitate Mahan Airway's unlawful acquisition and use of aircraft, aircraft engines and related aircraft services.

As discussed in the August 24, 2011 and February 12, 2012 Renewal Orders, Mr. Eslamian has a longstanding business relationship with Mahan Airways' senior officers and was involved in Mahan Airways' original conspiracy to acquire U.S.-origin 747s. He was originally approached by Mr. Arabnejad (Mahan Airways' Managing Director) and Mr. Mahmoudi (a Mahan Airways' shareholder and its Vice President for Business Development), who were seeking to establish a company in the United Kingdom for the purpose of making arrangements for them which Mahan Air was unable to do directly. Eslamian, along with Arabnejad and Mahmoudi, subsequently formed Skyco, where Eslamian has admitted to being a shareholder and managing director. Additionally, Eslamian inspected the 747s that Mahan was seeking to illegally acquire. At the request of Mahan Airways, he also attended the initial meetings between Mahan Airways and the Balli Group principals during which it was proposed that the Balli Group or Balli entities would act as a front for Mahan Airways in Mahan's scheme to acquire U.S.-origin aircraft. Furthermore, during his June 2011 meeting with BIS Special Agents, which his counsel attended, Mr. Eslamian admitted his longstanding business relationship and connections to senior Mahan Airways officers and/or directors, including Mr. Arabnejad and Mr. Mahmoudi. Eslamian was able to provide detailed insight into how Mahan Airways maintains and repairs its aircraft through the use of facilities in third countries.

Given Mr. Eslamian's role at Equipco, the indisputable evidence of his long-running and extensive ties to Mahan Airways, and his demonstrated willingness to use Equipco (and other entities he owns, controls or manages in whole or part) as a vehicle to evade the Regulations and the TDO, I find without merit Equipco's argument that it cannot be added to the TDO consistent with Section 766.23.

Based on the above, I find that Equipco is connected to Mahan Airways in the conduct of trade or business and thus is a related person to Mahan Airways, and that Equipco is related to Ali Eslamian by ownership, control, and position of responsibility. I also find whether considering both its relationship to both Mahan Airways and Mr. Eslamian, or only it relationship with Mahan, that Equipco should be added to the TDO in order to prevent its evasion.

In sum, under the applicable standard set forth in Section 766.23 of the Regulations and my review of the record here, I find that the evidence presented by OEE convincingly demonstrates that Mahan Air General Trading LLC, Skyco (UK) Ltd. and Equipco (UK) Ltd, are related to, as applicable, Mahan Airways, Zarand Aviation and/or Ali Eslamian, and that adding them to the TDO is necessary to prevent its evasion.

IV. Order

It is therefore ordered:

First, that MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; ZARAND AVIATION, A/K/A GIE ZARAND AVIATION, 42 Avenue Montaigne, 75008 Paris, France, and 112 Avenue Kleber, 75116 Paris, France; GATEWICK LLC, A/K/A GATEWICK FREIGHT & CARGO SERVICES, A/K/A GATEWICK AVIATION SERVICE, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; PEJMAN MAHMOOD KOSARAYANIFARD A/K/A KOSARIAN FARD, P.O. Box 52404, Dubai, United Arab Emirates; and MAHMOUD AMINI, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; MAHAN AIR GENERAL TRADING LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates; SKYCO (UK) LTD., 4th Floor, 33 Cavendish Square, London, W1G 0PV, United Kingdom; and EQUIPCO (UK) LTD., 2 Bentinck Close, Prince Albert Road, London, NW8 7RY, United Kingdom and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the

United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Sections 766.23(c) of the EAR, Zarand Aviation, at any time, may appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

A copy of this Order shall be sent to Mahan Air General Trading LLC, Skyco (UK) Ltd., and Equipco (UK) Ltd. and shall be published in the **Federal Register.** This Order is effective immediately and shall remain in effect until August 13, 2012, unless renewed in accordance with Section 766.24(d) of the Regulations.

Dated: April 9, 2012.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2012–9154 Filed 4–16–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Bottlenose Dolphin Conservation Outreach Survey

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 June 18, 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 Stacey Horstman, (727) 824–5312 or *Stacey.Horstman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision of a current information collection.

The objective of these surveys is to assess the level of awareness on issues related to regulations preventing feeding/harassment of wild bottlenose dolphins, which are protected under the Marine Mammal Protection Act. In particular, the surveys are designed to determine what commercial businesses and the general public know about specific regulations prohibiting feeding and harassment of bottlenose dolphins, and how they gained their knowledge and/or perceptions on the topic. The first survey was conducted in Panama City, Florida, where numerous incidences of dolphin harassment and feeding are continually documented. Revision: The intent is to use this survey in one to two other geographic areas of the southeast region that are also ''hot-spots'' for dolphin harassment and feeding activities to gain a similar understanding and ensure outreach messages are appropriate for intended audiences.

National Marine Fisheries Service (NMFS) will request information from local residents, tourists, and commercial businesses through a one-time survey in the geographic location identified in the revision supporting statement. This information, upon receipt, will be used to develop effective and better-targeted outreach efforts in order to enhance bottlenose dolphin conservation in the southeast United States.

II. Method of Collection

Participants voluntarily complete paper questionnaires and methods of submittal include on-site, mail, and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0594.

Form Number: None.

Type of Review: Regular submission (revision of a current information collection).

Affected Public: Individuals; business or other for-profits organizations.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annual Cost to Public: $0.

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: April 11, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–9097 Filed 4–16–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Gulf of Mexico Electronic Logbook Program

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 June 18, 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 Anik Clemens, (727) 551–5611 or *Anik.Clemens@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Gulf of Mexico Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. National Marine Fisheries Service (NMFS) manages the shrimp fishery in the waters of the Gulf of Mexico (Gulf) under the Shrimp Fishery Management Plan (FMP). The electronic logbook (ELB) regulations for the Gulf shrimp fishery may be found at 50 CFR § 622.5(a)(iii).

There are currently approximately 1,563 permitted vessels that harvest shrimp from the Exclusive Economic Zone (EEZ), and the Council estimates that there are over 13,000 boats that fish in state waters. With such a large number of vessels of differing sizes, gears used, and fishing capabilities compounded by seasonal variability in abundance and price and the broad geographic distribution of the fleet, ELBs provide a more precise means of estimating the amount of fishing effort than current methods. Using ELBs to improve estimating fishing effort will help improve estimating bycatch in the Gulf shrimp fleet.

II. Method of Collection

The electronic logbook autonomously collects effort data and is downloaded by contract personnel every 2–3 months. The electronic logbook memory chip will be removed from the unit and downloaded at the contractor site in College Station, Texas. A new logbook memory chip will replace the removed memory chip, a process taking less than one minute.

III. Data

OMB Control Number: 0648–0543.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 600.

Estimated Time per Response: ELB removal/reinstallation 1 minute.

Estimated Total Annual Burden Hours: 60.

Estimated Total Annual Cost to Public: $0 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: April 11, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–9096 Filed 4–16–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB069

Endangered and Threatened Species; Notice of Intent To Update a Recovery Plan for the Blue Whale and Prepare a Recovery Plan for the North Pacific Right Whale

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

ACTION: Notice of intent to update and prepare recovery plans; request for information.

SUMMARY: The National Marine Fisheries Service (NMFS) is announcing its intent to update a recovery plan for the blue whale (*Balaenoptera musculus*) and prepare a recovery plan for the North Pacific right whale (*Eubalaena japonica*) and requests information from the public. NMFS is required by the Endangered Species Act of 1973 (ESA), as amended to develop plans for the

conservation and survival of federally listed species, *i.e.,* recovery plans.

DATES: To allow NMFS adequate time to conduct the reviews, all information must be received no later than May 17, 2012.

ADDRESSES: You may submit comments on these documents, identified by NOAA–NMFS–2012–0091, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0091 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

• *Mail:* Submit written comments to Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East West Highway, Silver Spring, MD 20910, Attn: Recovery Plans.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Larissa Plants, Office of Protected Resources, 301–427–8471, or Shannon Bettridge, Office of Protected Resources, 301–427–8437.

SUPPLEMENTARY INFORMATION: Management responsibility for blue whales and North Pacific right whales lies with the Secretary of Commerce and has been delegated to NMFS. As such, NMFS is charged with the recovery of blue and North Pacific right whales, which are listed as endangered under the ESA. The recovery planning process is guided by the statutory language of Section 4(f) of the ESA and NMFS policies. Recovery planning identifies all methods and procedures that are necessary to recover any endangered species or threatened species. Section 4(f)(1)(B) of the ESA specifies that recovery plans must incorporate in each plan (i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species; (ii) objective, measurable criteria which when met, would result in a determination, that the species be removed from the list; and (iii) estimates of the time required and cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

Section 4(f)(4) of the ESA requires that public notice and an opportunity for public review and comment be provided during recovery plan development. NMFS requests relevant information from the public during preparation of the draft Recovery Plans. Such information should address: (a) criteria for removing the these whales from the list of threatened and endangered species; (b) factors that are presently limiting, or threaten to limit, the survival of the blue and North Pacific right whales; (c) actions to address limiting factors and threats; (d) estimates of time and cost to implement recovery actions; and (e) research, monitoring and evaluation needs. Upon completion, the draft Recovery Plans will be available for public review and comment through the publication of a **Federal Register** Notice.

Authority: 6 U.S.C. 1531 *et seq.*

Dated: April 10, 2012.

Marta Nammack,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–9239 Filed 4–16–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Management Plan and Environmental Assessment for Monitor National Marine Sanctuary: Notice of Public Availability and Meetings

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public availability and meetings.

SUMMARY: In accordance with section 304(e) of the National Marine Sanctuaries Act (NMSA), as amended, NOAA is soliciting public comment on the draft management plan and draft environmental assessment for Monitor National Marine Sanctuary.

DATES: *Comments:* Comments on the draft management plan and draft environmental assessment will be considered if received on or before June 22, 2012.

Public meetings: See **SUPPLEMENTARY INFORMATION** section below for the dates and locations for the public meetings.

ADDRESSES: To obtain a copy: For a copy of the draft management plan and draft environmental assessment, contact the Management Plan Review Coordinator, Monitor National Marine Sanctuary, 100 Museum Drive, Newport News, VA 23606. Copies can also be downloaded from the Monitor National Marine Sanctuary Web site at *http://monitor.noaa.gov.*

To submit comments: Comments on the draft management plan and draft environmental assessment may be submitted by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Submit electronic comments via the Federal eRulemaking Portal with Docket Number NOAA–NOS–2012–0076.

2. By email to *monitor@noaa.gov;*

3. By providing comments (oral or written) at one of the public meetings (see public meetings section below); or

4. In writing to the Monitor NMS Management Plan Review Coordinator at 100 Museum Drive, Newport News, VA 23606.

Instructions: All comments received are a part of the public record and will be generally posted to http://www.regulations.gov without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Public meetings: See **SUPPLEMENTARY INFORMATION** section for the dates and locations for the public meetings.

FOR FURTHER INFORMATION CONTACT: Shannon Rides, Management Plan Review Coordinator, at (757) 591–7328.

SUPPLEMENTARY INFORMATION:

Background information

On January 30, 1975, the National Oceanic and Atmospheric Administration (NOAA) designated Monitor National Marine Sanctuary (MNMS) as the nation's first national marine sanctuary (NMS). Managed by NOAA's Office of National Marine Sanctuaries (ONMS), it protects the wreck of the famed Civil War ironclad, USS Monitor, best known for its battle with the Confederate ironclad, CSS Virginia in Hampton Roads, VA., on March 9, 1862. The sanctuary also promotes appreciation and responsible use of the ocean.

NOAA is undergoing a review of the Monitor NMS draft management plan pursuant to section 304(e) of the NMSA, and is now releasing the plan for public review and comment. The draft management plan (2012) was prepared by NOAA in cooperation with the Monitor NMS Sanctuary Advisory Council and with input from the public, local governments, state and federal agencies, and other stakeholders. The draft plan is comprised of eight action plans (education and outreach; research and monitoring; resource protection; visitor use; USS Monitor sailors; possible future sanctuary expansion; conservation; and operations and administration). It sets priorities to guide sanctuary programs and operations, and provides the public with a better understanding of the sanctuary's strategies to protect the USS Monitor.

The accompanying draft environmental assessment analyzes the environmental impacts of the draft management plan pursuant to the National Environmental Policy Act. In doing so, it analyzes two alternatives: the status quo (no change) and the preferred alternative (2012 management plan).

Public meetings

Public meetings will be held at the following locations and dates:

1. April 30, 6:30 p.m., Raleigh, NC, NC Museum of History, 5 East Edenton Street, Raleigh, NC 27601.

2. May 1, 6:30 p.m., Wilmington, NC, NC Maritime Museum, 204 E Moore Street, Southport, NC 28461.

3. May 2, 6:30 p.m., Beaufort, NC, NC Maritime Museum, 315 Front Street, Beaufort, NC 28516.

4. May 3, 6:30 p.m., Nags Head, NC, Jennette's Pier at Nags Head, 7223 South Virginia Dare Trail, Milepost 16.5, Nags Head, NC 27959.

5. May 4, 2 p.m., Newport News, VA, The Mariners' Museum, 100 Museum Drive, Newport News, VA 23606.

Dated: April 9, 2012.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. 2012–9031 Filed 4–16–12; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; State Broadband Data and Development Grant Program Progress Report

AGENCY: National Telecommunications and Information Administration.

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 the proposed revision and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 18, 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 email to *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Anne Neville, Director, State Broadband Initiative, Department of Commerce, National Telecommunications and Information Administration, 14th and Constitution Avenue NW., Washington, DC 20230 (or via email at *aneville@ntia.doc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 6001 (l) of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5 (2009), required the Assistant Secretary of Commerce for Communications and Information (Assistant Secretary) to develop and maintain a comprehensive, interactive, and searchable nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial or public provider throughout each state. (Recovery Act section 6001(l), 123 Stat. at 516). The statue further provided that the Assistant Secretary would make the national broadband map accessible by the public on a National Telecommunications and Information Administration (NTIA) Web site no later than February 17, 2011.

On July 8, 2009, NTIA issued the Notice of Funds Availability (NOFA) and Solicitation of Applications setting forth the requirements for the State Broadband Data and Development (SBDD) Grant Program (NOFA, 74 FR 32545, July 8, 2009), a competitive, merit-based matching grant program funding projects that collect comprehensive and accurate State-level broadband mapping data, develop State-level broadband maps, aid in the development and maintenance of a national broadband map, and fund statewide initiatives directed at broadband planning and capacity building.

The NOFA requires grantees to submit regular reports to NTIA. Specifically it states:

> ''All grantees under this Program will provide quarterly reports on:
>
> (a) Achievement of project goals, objectives, and milestones (e.g., collection of a ''substantially complete data set''; completion of data review or quality control process) as set forth by the applicant in their application timeline;
>
> i. expenditure of grant funds and how much of the award remains;
>
> ii. Amount of non-federal case or in-kind investment that is being added to complete the project; and
>
> iii. whether the grantee is on schedule to provide broadband-related data in accordance with the mapping project timeline.'' See 74 FR 32556 (July 8, 2009).

NTIA requires these quarterly Performance Progress Reports (PPRs) in order to gauge the progress of grantees in meeting their project goals. Without such formal reporting, NTIA is unable to effectively monitor the expenditure of these Recovery Act funds. While grantees are also required to submit Recovery Act reports, these reports do not include vital details that NTIA needs in order to provide proper oversight of activities.

After reviewing recent PPRs, NTIA has identified a need to revise its existing PPR format by changing existing questions and adding new questions to improve clarity, reduce the frequency with which some information is reported, and delete certain items that are not necessary for effective performance monitoring. The revisions will improve the quality of recipients' responses and enable NTIA to better monitor and assess the extent to which the recipients are meeting program goals

and milestones. NTIA has assessed that the revisions will not change the estimated response time on grantees.

II. Method of Collection

NTIA will continue to require grantees to submit their reports using the existing Post-Award Monitoring (PAM) System.

III. Data

OMB Control Number: 0660–0034.
Form Number(s): None.
Type of Review: Regular submission (revision of a currently approved information collection).
Affected Public: State governments and not-for-profit institutions.
Estimated Number of Respondents: 56.
Estimated Time per Response: 4 hours.
Estimated Total Annual Burden Hours: 896.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the revised 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 revised proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the monitoring 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: April 12, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–9164 Filed 4–16–12; 8:45 am]

BILLING CODE 3510–06–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), 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. 3507(a)(1)(D)). The Bureau is soliciting comments regarding the information collection requirements relating to the Financial Education Program that has been submitted to the Office of Management and Budget for review and approval. A copy of the submission may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before May 17, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by OMB number 3170–XXXX–Financial Education Program, by any of the following methods:

- *Agency Contact:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC, 20552: (202) 435–7741: *CFPB_Public_PRA@cfpb.gov.*
- *OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Joseph Durbala, (202) 435–7893, at the Consumer Financial Protection Bureau, (Attention: Joseph Durbala, PRA Office) 1700 G Street, NW., Washington, DC 20552, or through the internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Financial Education Program.
OMB Number: 3170–XXXX.
Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, the Bureau's Office of Financial Education (''OFE'') is responsible for developing and implementing a strategy to improve the financial literacy of consumers that includes measurable goals and initiatives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Literacy.

The collection will focus on financial education program elements related to increasing household non-retirement savings and/or reducing financial distress.

The CFPB expects to collect quantitative and qualitative data through in-person, telephone, or Internet based surveys. The information collected through quantitative and qualitative evaluation methods will increase OFE's understanding of what interventions can improve financial decision-making skills and outcomes for consumers.

The core objective of the data collection is to measure the effectiveness of selected financial education programs. This data will provide useful information on evidence based practices improve financial education programs nationwide, leading to better financial decision-making outcomes for adult consumers.

Type of Review: New collection.
Affected Public: Individuals.
Estimated Number of Responses: 10,000.
Estimated Time per Respondent: 60 minutes.
Estimated Total Annual Burden Hours: 8,000.

Dated: April 6, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–9149 Filed 4–16–12; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), 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. 3507(a)(1)(D)). The Bureau is soliciting comments regarding the information collection requirements relating to the Secure and Fair Enforcement for Mortgage Licensing Act that have been submitted to the Office of Management and Budget for review and approval. A copy of the submission may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before May 17, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by OMB number 3170–0005, by any of the following methods:

• *Agency Contact:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC, 20552: (202) 435–7741: *CFPB_Public_PRA@cfpb.gov.*

• *OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Joseph Durbala, (202) 435–7893, at the Consumer Financial Protection Bureau, (Attention: Joseph Durbala, PRA Office) 1700 G Street NW., Washington, DC 20552, or through the internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Secure and Fair Enforcement for Mortgage Licensing Act (Regulation G) 12 CFR Part 1007.

OMB Number: 3170–0005.

Abstract: The information collection will improve the flow of information to and between regulators; provide accountability and tracking of mortgage loan originators (MLOs), enhance consumer protections, reduce fraud in the residential mortgage loan origination process and provide consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, MLOs.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for profits.

Estimated Number of Responses: 33,656.

Estimated Time per Response: 27 minutes.

Estimated Total Annual Burden Hours: 15,183.

Dated: April 6, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–9150 Filed 4–16–12; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), 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. 3507(a)(1)(D)). The Bureau is soliciting comments regarding the information collection requirements relating to the Fair Credit Reporting Act regulations that have been submitted to the Office of Management and Budget for review and approval. A copy of the submission, including copies of the proposed collection and supporting documentation, may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before May 17, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by OMB number 3170–0002, by any of the following methods:

• *Agency Contact:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552: (202) 435–7741: *CFPB_Public_PRA@cfpb.gov.*

• *OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Joseph Durbala, (202) 435–7893, at the Consumer Financial Protection Bureau, (Attention: Joseph Durbala, PRA Office) 1700 G Street, NW., Washington, DC 20552, or through the internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Fair Credit Reporting Act (Regulation V) 12 CFR 1022.

OMB Control Number: 3170–0002.

Abstract: The consumer disclosures included in Regulation V are designed to alert consumers that a financial institution furnished negative information about them to a consumer reporting agency, that they have a right to opt out of receiving marketing materials and credit or insurance offers, that their credit report was used in setting the material terms of credit that may be less favorable than the terms offered to consumers with better credit histories, that they maintain certain rights with respect to a theft of their identity that they reported to a consumer reporting agency, that they maintain rights with respect to knowing what is in their consumer reporting agency file, that they can request a free credit report, and that they can report a theft of their identity to the CFPB. Consumers then can use the information provided to consider how and when to check and use their credit reports.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profit.

Estimated Number of Responses: 13,630,000.

Estimated Time per Response: 21 minutes.

Estimated Total Annual Burden Hours: 4,736,000.

Dated: April 6, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–9152 Filed 4–16–12; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), 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. 3507(a)(1)(D)). The Bureau is soliciting comments regarding the information collection requirements relating to the Truth in Savings regulations that have been submitted to the Office of Management and Budget for review and approval. A copy of the submission may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before May 17, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by OMB number 3170–0004, by any of the following methods:

• *Agency Contact:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW.,

Washington, DC 20552: (202) 435–7741: *CFPB_Public_PRA@cfpb.gov.*

• *OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Joseph Durbala, (202) 435–7893, at the Consumer Financial Protection Bureau, (Attention: Joseph Durbala, PRA Office) 1700 G Street NW., Washington, DC 20552, or through the internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Truth in Savings (Regulation DD) 12 CFR 1030.

OMB Number: 3170–0004.

Abstract: Federal agencies use the records to ascertain whether accurate and complete disclosures of depository accounts have been provided to consumers. This information also provides the primary evidence of law violations in Truth in Savings (TISA) enforcement actions brought by the CFPB and other agencies. Without the Regulation DD recordkeeping requirement, the agencies' abilities to enforce TISA would be significantly impaired. Consumers rely on the disclosures required by TISA and Regulation DD to facilitate informed decision making regarding deposit accounts offered at depository institutions. Without this information, consumers would be severely hindered in their ability to assess the true costs and terms of the deposit accounts offered. These disclosures and provisions are necessary for the enforcement agencies to enforce TISA and Regulation DD.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for profits.

Estimated Number of Responses: 378,960.

Estimated Time per Response: 4 minutes.

Estimated Total Annual Burden Hours: 23,000.

Dated: April 6, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–9151 Filed 4–16–12; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed VISTA Training Evaluation Alumni & Project Supervisor Survey. Online surveys will be conducted with 500 VISTA alumni and 100 VISTA Project Supervisors in order to obtain their opinions regarding the effectiveness and efficiency of VISTA member training. This information will allow VISTA to improve the VISTA training curricula and structure in the future.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by June 18, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, VISTA; Attention Craig Kinnear, Program Analyst, Room 9103A; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3475, Attention: Craig Kinnear, Program Analyst.

(4) Electronically through *www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Craig Kinnear, (202) 606–6708, or by email at *ckinnear@cns.gov.*

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background:

VISTA Alumni will be surveyed to determine how well VISTA training prepared them for their VISTA service. VISTA Project Supervisors will be surveyed to determine how well VISTA training prepared their VISTA members for service. Surveys will be conducted electronically through Survey Monkey.

Current Action

This is a new information collection request.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: VISTA Training Evaluation Alumni & Project Supervisor Survey.

OMB Number: NA.

Agency Number: None.

Affected Public: VISTA Alumni & VISTA Project Supervisors.

Total Respondents: 600.

Frequency: Once.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 300 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 10, 2012.

Mary Strasser,

Director, AmeriCorps VISTA.

[FR Doc. 2012–9117 Filed 4–16–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2011–OS–0139]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 17, 2012.

Title, Form, and OMB Number: Department of Defense Inventory of Contracts for Services Compliance; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 48,884.

Responses Per Respondent: 1.

Annual Responses: 48,884.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 4,074 hours.

Needs and Uses: This collection is necessary to allow all DoD organizations to fully implement sections 235 and 2330a of title 10, United States Code. The information requested, such as the Reporting Period, Contract Number, Task/Delivery Order Number, Customer Name and Address, Contracting Office Name and Address, Federal Supply Class or Service Code, Contractor Name and Address, Value of Contract Instrument, and the Number and Value of Direct Labor Hours will be used to facilitate the accurate identification of the function performed and to facilitate estimate the reliability of the data. The Direct Labor Hours are requested for use in calculating contractor manpower equivalents. This information is reported directly from the contractor because this is the most credible data source.

Affected Public: Business or other for profit; not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: April 6, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–9147 Filed 4–16–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0177; Docket No. 2011–0076; Sequence 4]

Submission for OMB Review; Comment Request; Reporting Executive Compensation and First-Tier Subcontract Awards

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

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 a previously approved information collection requirement for Reporting Executive Compensation and First-tier Subcontract Awards. An initial notice soliciting public comments on the information collection was published in the **Federal Register** at 75 FR 39414, on July 8, 2010, as part of an interim rule under FAR case 2008–039. The public comments received on only the information collection are addressed in this notice under, **SUPPLEMENTARY INFORMATION.** Comments on the rest of the interim rule will be addressed with the issuance of the final rule.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 17, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0177, Reporting Executive Compensation and First-tier Subcontract Awards, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0177, Reporting Executive Compensation and First-tier Subcontract Awards.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0177, Reporting Executive Compensation and First-tier Subcontract Awards'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., Washington, DC 20417.
- *Instructions:* Please submit comments only and cite ''Information Collection 9000–0177, Reporting

Executive Compensation and First-tier Subcontract Awards,'' in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, Contract Policy Division, at telephone 202–219–1813 or via email to *william.clark@gsa.gov.*

SUPPLEMENTARY INFORMATION:

I. Purpose

The Federal Funding Accountability and Transparency Act (''Transparency Act''), Public Law 109–282, as amended by section 6202 of Public Law 110–252, was enacted to reduce ''wasteful and unnecessary spending'' by requiring that OMB establish a free, public, online database containing full disclosure of all Federal contract award information for awards of $25,000 or more.

DoD, GSA, and NASA published an interim rule for public comment at 75 FR 39414, on July 8, 2010, to implement the Transparency Act reporting requirements. The rule requires the insertion of FAR clause 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards, in solicitations and contracts (including commercial item contracts and commercially available off-the-shelf (COTS) item contracts) of $25,000 or more.

The clause at 52.204–10 requires, unless otherwise directed by the contracting officer, for first-tier subcontracts valued at $25,000 or more, prime contractors to report first-tier subcontract award data (*e.g.,* name, amount, address, etc.). If the contractor in the previous tax year had gross income, from all sources, under $300,000, the contractor is exempt from the requirement to report first-tier subcontractor awards. If a first-tier subcontractor in the previous tax year had gross income from all sources under $300,000, the contractor does not need to report awards to that first-tier subcontractor. Contractors will provide these subcontract reports to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) (*http://www.fsrs.gov*). DoD, GSA, and NASA note that there is pre-population of some data in FSRS from other Government systems.

The clause at 52.204–10 also requires a contractor to report in the Central Contractor Registration (CCR) database at *http://www.ccr.gov,* the names and total compensation of each of its five most highly compensated executives for the contractor's preceding completed fiscal year. Contractors and first-tier subcontractors are not required to report the total compensation information required by the rule, unless—

(i) In the contractor or subcontractor's preceding fiscal year, the contractor or subcontractor received—

(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements; and

(2) $25,000,000 or more in annual gross revenue from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm*.)

II. Analysis of Public Comments

Comments were received on the information collection requirement estimated annual burden as well as the interim rule. DoD, GSA, and NASA have revised the information collection requirement estimated annual burden as a result of analysis of the public comments. The comments on the rest of the interim rule will be addressed with the issuance of the final rule. The analysis of public comments is summarized as follows:

Comment: A respondent commented that DoD, GSA, and NASA significantly underestimated the costs associated with the reporting requirements, and failed to include in the calculations of such costs the time required to research and obtain the required information. A respondent expressed concern about the overhead rate of 36.35 percent used in the ''per hour'' calculations. The respondent commented that a rate of 90 percent is more accurate as the work will be performed by corporate personnel with both fringe and facility components. Additionally, the respondent indicated that while some subcontractors will be excluded from reporting compensation, prime contractors will be obligated to conduct research in order to ensure that subcontractor exclusion determinations are accurate. Several respondents opined that DoD, GSA, and NASA's determination that prime contractors will require only 1 hour to comply with the reporting requirements does not anticipate the time and costs for complying with the clause.

Response: DoD, GSA, and NASA have concluded that the reporting requirements are, for the most part, annual submissions, hence; the preparation of the reports does not require a full time position. A company officer or division manager or a company subcontract administrator, as part of their official duties, would have the professional skills necessary for the preparation of the report. DoD, GSA, and NASA point out that the overhead rate consist of employee paid benefits, time off, along with payroll taxes and other staff employment benefit-related expenses (direct personnel expense); not the cost of heating, lighting, rent, etc., (general and administrative expenses) which would be ongoing operating costs incurred by prime contractors notwithstanding the reporting requirements. Based on this information, DoD, GSA and NASA have determined that while the overhead rate of 36.35 percent used in the ''per hour'' calculations may appear to be low, the overhead rate of 36.35 is adequate for the estimated burden calculation.

DoD, GSA, and NASA agree that prime contractors will require additional time to meet the reporting requirements, as such, the combined ''Preparation Hours per Response'' time are revised from ''1'' hour to ''2.12'' hours. DoD, NASA and GSA note that a number of aspects of the clause may lessen the reporting requirement on businesses, including exceptions in the clause that exclude some contractors from reporting the information, and pre-population of data in FSRS from other Government systems.

Comment: Several respondents question the estimated cost to the public of $21 million to report subcontract award data, and commented that the cost is not sufficient to meet the Congressional intent of a free public Web site since the expense will borne by the taxpayer. Another respondent suggested that the Government consider the cost benefit of implementing the rule.

Response: DoD, GSA, and NASA have revised the combined estimated cost to the public to be $36,478,804. While the respondent did not provide an alternative estimate or a basis to support its contention, the revised estimate is based on a re-evaluation of the time to meet the reporting requirement and Fiscal Year 2010 (FY10) FPDS data collected for the applicable contract actions.

The reporting is required to implement the Transparency Act that

was mandated by Congress. The Paperwork Burden Act information collection analysis was performed to determine the administrative burden on the public including the cost associated with collecting and reporting on the requirement.

III. Annual Reporting Burden

DoD, GSA, and NASA estimate the annual burden associated with reporting requirements of FAR 52.204–10 to be $36,478,804.

1. *Reporting first-tier subcontract award information.* The FY10 Federal Procurement Data System (FPDS) data collected for new contract actions valued at $25,000 or greater, indicated that there were 76,889 contractors with unique DUNS numbers. DoD, GSA, and NASA estimate that based on the exemptions in the rule (*e.g.,* contractors in the previous tax year with less than $300,000 in gross income do not have to report), seventy-five percent of the contractors with actions valued at $25,000 or greater would be subject to the reporting requirements. The burden to report the subcontractor award information (*e.g.,* name, amount, address, etc.) under FAR 52.204–10 is estimated to average 2 hours per response for a prime contractor and approximately three first-tier subcontractors per prime contractor. We estimate the total annual public cost burden for these elements to be $31,370,848 based on the following:

Respondents: 230,668.

Responses per respondent: 1.

Total annual responses: 230,668.

Preparation hours per response: 2.

Total response burden hours: 461,336.

Average hourly wages ($50.00 + 36.35% overhead. Rounded to nearest dollar): $68.00.

Estimated cost to the public: $31,370,848.

2. *Reporting executive compensation.* There were 625,884 active registrants in CCR as of January 1, 2012. Of the 625,884 total active registrants, 620,777 were screened out by two questions supporting the rule's requirements, *i.e.,* didn't have 80% or more of their annual gross revenue in U.S. Federal contracts, grants, and/or cooperative agreements and didn't make more than $25 million in annual gross revenue, or did have 80% or $25 million from Federal contracts/grants/cooperative agreements, but the public already had access to the information. DoD, GSA, and NASA estimate that it would require those 620,777 registrants 0.10 hours per response, for a total of 62,078 response hours.

A total of 5,107 CCR registrants have entered actual values for their top five most highly compensated executives. Additionally, there were 90 registrants that provided their executive compensation responses to FSRS rather than CCR. So, the total additional burden imposed to respond to all three questions posed in the reporting tool is 5,197. DoD, GSA, and NASA estimate that it would require those 5,197 registrants 2.5 hours to provide the information required, for a total of 12,993 response hours.

Therefore, DoD, GSA, and NASA estimate that the total population of respondents is 625,974, and the total estimated response hours is 75,071, resulting in a weighted average of 0.12 hours per respondent for executive compensation reporting.

The Councils estimate the total annual public cost burden for this element to be $5,107,956 based on the following:

Respondents: 625,974 (subcontractors and prime contractors).

Responses per respondent: 1.

Total annual responses: 625,974.

Preparation hours per response: 0.12.

Total response burden hours: 75,117.

Average hourly wages: ($50.00 + 36.35% overhead): $68.00.

Estimated cost to the public: $5,107,956.

Based on the above calculations, DoD, GSA, and NASA estimate the total annual burden associated with reporting requirements of FAR 52.204–10 to be $36,478,804. The reporting burden includes the time for reviewing instructions, and reporting the data. It does not cover the time required to conduct research or the time to obtain the information for the data elements.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone 202–501–4755. Please cite OMB Control No. 9000–0177, Reporting Executive Compensation and First-tier Subcontract Awards, in all correspondence.

Dated: April 11, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–9112 Filed 4–16–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0055; Docket 2012–0076; Sequence 7]

Federal Acquisition Regulation; Information Collection; Freight Classification Description

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public 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 concerning freight classification description.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 18, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0055, Freight Classification Description, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0055, Freight Classification Description'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0055, Freight Classification Description''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your

name, company name (if any), and ''Information Collection 9000–0055, Freight Classification Description'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0055, Freight Classification Description.

Instructions: Please submit comments only and cite Information Collection 9000–0055, Freight Classification Description, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Glover, Sr., Procurement Analyst, Office of Acquisition Policy, at (202) 501–1448 or via email at *Curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Government is required to provide, in solicitations, a complete description of the commodity to be acquired and of packing requirements to determine transportation (freight rate) charges for the evaluation of offers. Generally, the freight rate for supplies is based on the ratings applicable to the freight classification description published in the National Motor Freight Classification (for carriers) and the Uniform Freight Classification (for rail) filed with Federal and State regulatory bodies. When the Government purchases supplies that are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, per FAR clause 52.247–53, offerors are requested to indicate the full Uniform Freight Classification or National Motor Freight Classification. The Government will use these descriptions as well as other information available to determine the classification description most appropriate and advantageous to the government.

B. Annual Reporting Burden

Respondents: 3,000.
Responses per Respondent: 3.
Annual Responses: 9,000.
Hours per Response: .167.
Total Burden Hours: 1,503.
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. 9000–0055, Freight Classification Description, in all correspondence.

Dated: April 11, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–9113 Filed 4–16–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Amendment to the Inland Waterways Users Board

AGENCY: DoD.

ACTION: Charter Amendment for Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(d), the Department of Defense gives notice that it is amending the charter for the Inland Waterways Users Board (hereafter referred to as ''the Board''). The Board is authorized by statute, and shall provide the Secretary of Defense, through the Secretary of the Army and the Assistant Secretary of the Army for Civil Works, independent advice and recommendations on matters relating to construction and rehabilitation priorities and spending levels on the commercial navigation features and components of the U.S. inland waterways and inland harbors as defined in Public Law 95–502 and amended by Public Law 99–662.

According to 33 U.S.C. 2251b, the Board shall annually file their recommendations with the Secretary of the Army and with Congress. The Secretary of the Army, pursuant to DoD policy, may act upon the Board's advice and recommendations. Board members, as determined by the Department of Defense, shall be representative members and, pursuant to 33 U.S.C. 2251(a), the Board shall be composed of eleven members.

Based upon the Secretary of the Army's recommendation, the Secretary of Defense shall invite primary commercial users and shippers of the inland and intracoastal waterways to serve on the Board. Commercial users and shippers invited to serve on the Board shall designate an individual to represent the organization's interests.

The Department of Defense, when considering prospective users and shippers to be represented on the Board, shall ensure selections represent various regions of the country and a spectrum of the primary users and shippers utilizing the inland and intracoastal waterways for commercial purposes. Due consideration shall be given to assure a balance among the members based on the ton-mile shipments of the various categories of commodities shipped on inland and intracoastal waterways.

A primary user or shipper may be represented on the Board, at the request of the Secretary of the Army and with the approval of the Secretary of Defense, for a two-year term of service with annual renewals. A user or shipper may be represented on the Board for no more than two terms of service (four years); a user or shipper may be subsequently represented on the Board, but only after being off the Board for at least two years.

In addition to the primary users and shippers invited by the Secretary of Defense, the Secretary of the Army shall designate, and the Secretaries of Agriculture, Transportation and Commerce may each designate a representative to act as an observer of the Board. These observers, who have no voting rights, shall be full-time or permanent part-time employees of his or her respective agency.

Pursuant to 33 U.S.C. 2251(a), the Secretary of the Army shall designate one Board member to serve as the Board's Chairperson. With the exception of travel and per diem for official travel, all Board members shall serve without compensation.

With DoD approval and according to DoD policies and procedures, the Board, consistent with its mission, is authorized to establish subcommittees, task groups, or working groups to support the Board. These subcommittees or working groups shall operate under the provisions of FACA, the Sunshine Act, and other governing Federal statutes and regulations, and governing DoD policies and procedures.

Such subcommittees or task groups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittee or its members update or report directly to the Department of Defense or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the

Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of two years; however, no member shall serve more than two consecutive terms of service on the subcommittee.

With the exception of travel and per diem for official travel, subcommittee members shall serve without compensation.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Acting Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson. The Board shall meet at least semi-annually.

In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Inland Waterways Users Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Inland Waterways Users Board.

All written statements shall be submitted to the Designated Federal Officer for the Inland Waterways Users Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Inland Waterways Users Board's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Inland Waterways Users Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 12, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–9165 Filed 4–16–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Termination of Provider Reimbursement Demonstration Project for the State of Alaska

AGENCY: Department of Defense (DoD).

ACTION: Notice of demonstration termination.

SUMMARY: This notice provides a termination of the demonstration project in the State of Alaska for individual provider payment rates. Under the demonstration, payment rates for physicians and other non-institutional individual professional providers in the State of Alaska have been set at a rate higher than the Medicare rate. The goal of the demonstration was to determine at what rate payment would need to be set in order to encourage higher participation in the TRICARE program by providers in Alaska.

DATES: The demonstration regarding payment rates for physicians and other non-institutional providers is terminated effective May 17, 2012.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Glenn J. Corn, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3566.

SUPPLEMENTARY INFORMATION: On November 20, 2006 (71 FR 67113), DoD published a Notice of a TRICARE demonstration project for the State of Alaska, with an effective date of January 1, 2007. The demonstration set payment rates for physicians and other non-institutional individual professional providers in the State of Alaska at a rate higher than the Medicare rate in order to determine if more individual providers would participate in the TRICARE program. The demonstration was effective January 1, 2007 for a period of three years, ending on December 31, 2009. The demonstration was extended twice. On December 18, 2009 (74 FR 67179), DoD published a Notice of demonstration extension that extended the demonstration through December 31, 2010, and on July 8, 2010 (75 FR 39213), DoD published a Notice of demonstration extension that extended the demonstration through December 31, 2012.

An analysis of the effectiveness of the demonstration was conducted and it showed an increase in provider participation. This increased participation opened access to local specialty care that had previously been severely impaired, and it decreased the overall cost of health care by reducing the travel costs incurred by the Department for Prime beneficiaries who had been forced to travel long distances to receive care outside of Alaska. The demonstration also showed that each geographic area in Alaska had increased participation using the same ''multiplier'' of the Medicare rate. Thus in order to preserve the successes made through the demonstration project in improving provider access and to keep the CHAMPUS Maximum Allowable Charge rates in relative proportion with the demonstration rates, the Department has determined that it can use its current authority under Title 10, United States Code, section 1079(h)(5) to provide a state-wide locality based reimbursement waiver without requesting additional statutory or regulatory authority for the State of Alaska. A state-wide locality based waiver was approved by the Director of TMA under current authority (Title 32, Code of Federal Regulations, section 199.14(j)(1)(iv)(D)) on September 15, 2011, and thus the need for this demonstration has ceased. This state-wide locality based reimbursement waiver allows the higher individual provider payment rates associated with the demonstration project.

Dated: March 30, 2012.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–9146 Filed 4–16–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board; Notice of Meeting

AGENCY: Department of the Air Force, U.S. Air Force Scientific Advisory Board.

ACTION: Meeting notice.

SUMMARY: Due to difficulties, beyond the control of the U.S. Air Force Scientific Advisory Board or its Designated Federal Officer, the Board was unable to file a **Federal Register** notice for the

April 24, 2012 meeting of the U.S. Air Force Scientific Advisory Board as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board (SAB) meeting will take place 24 April 2012 at the Air Force Operational Test & Evaluation Center Headquarters Annex, 8500 Gibson Blvd. SE., Kirtland AFB, NM 87117. The meeting will be from 7:45 a.m.–12 p.m., with the sessions from 7:45 a.m.–8:15 a.m. and 11 a.m.–12 p.m. open to the public. The banquet from 7 p.m. to 8:35 p.m. on 24 April 2012 at the Hyatt Regency Albuquerque, 330 Tijeras Ave. NW., Albuquerque, NM 87102 will also be open to the public.

The purpose of this Air Force Scientific Advisory Board quarterly meeting is to provide an update on the FY12 SAB study topics to the Board as well as an outbrief from the Air Force Office of Scientific Research review and will include discussions on non-traditional intelligence, surveillance, and reconnaissance data collection and exploitation; ensuring cyber situational awareness for commanders; and extended use of Air Force Space Command space-based sensors.

In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, The Administrative Assistant of the Air Force, in consultation with the Air Force General Counsel, has agreed that the public interest requires some sessions of the United States Air Force Scientific Advisory Board meeting be closed to the public because they will discuss information and matters covered by section 5 U.S.C. 552b(c)(1).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt Col Matthew E. Zuber, 240–612–5503, United States Air Force Scientific Advisory Board, 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762, *matthew.zuber@pentagon.af.mil.*

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2012–9214 Filed 4–16–12; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Asian Americans and Pacific Islanders

AGENCY: U.S. Department of Education, President's Advisory Commission on Asian Americans and Pacific Islanders.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Advisory Commission on Asian Americans and Pacific Islanders (Commission). The notice also describes the functions of the Commission. Notice of the meeting is required by section 10 (a) (2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

Date: May 7, 2012.

Time: 8:30 a.m.–5:00 EDT.

Address: National Education Association, 1201 16th Street NW., Washington, DC 20036.

Date: May 8, 2012.

Time: 8:30 a.m.–12 noon EDT.

Address: National Education Association, 1201 16th Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Shelly W. Coles, White House Initiative on Asian Americans and Pacific Islanders, 400 Maryland Avenue SW., Washington, DC 20202; telephone: (202) 453–7277, fax: 202–453–5632.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Asian Americans and Pacific Islanders is established under Executive Order 13515, dated October 14, 2009. Per E.O. 13515, the Commission shall provide advice to the President, through the Secretaries of Education and Commerce, as Co-Chairs of the Initiative, on: (i) The development, monitoring, and coordination of executive branch efforts to improve the quality of life of AAPIs through increased participation in Federal programs in which such persons may be underserved; (ii) the compilation of research and data related to AAPI populations and subpopulations; (iii) the development, monitoring, and coordination of Federal efforts to improve the economic and community development of AAPI businesses; and (iv) strategies to increase public and private-sector collaboration, and community involvement in improving the health, education, environment, and well-being of AAPIs.

Agenda

The purpose of the meeting is to discuss strategic planning and establish sub-committees of the Commission to help facilitate and focus its work; review the work of the White House Initiative on Asian Americans and Pacific Islanders; and determine key strategies to help meet the Commission's charge as outlined in E.O. 13515.

Additional Information:

Individuals of the public who would like to attend the meeting on May 7 and 8, 2012 of the President's Advisory Commission on Asian Americans and Pacific Islanders shall R.S.V.P. to Shelly Coles via email at *shelly.coles@ed.gov* no later than, May 4, 2012 at 3 p.m. EDT.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify Shelly Coles at (202) 453–7277, no later than Friday, April 20, 2012. We will attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The meeting site is accessible to individuals with disabilities. Due to time constraints, there will not be a public comment period at this meeting, However, individuals wishing to provide comment(s) about the White House Initiative on Asian Americans and Pacific Islanders or the President's Advisory Commission on Asian Americans and Pacific Islanders may contact Shelly Coles via email at

shelly.coles@ed.gov. Please include in the subject line, the wording, ''Public Comment''.

Records are kept of all Commission proceedings and are available for public inspection at the office of the White House Initiative on Asian Americans and Pacific Islanders, U.S. Department of Education, 400 Maryland Avenue SW. Washington, DC 20202, Monday–Friday during the hours of 8:30 a.m. to 5 p.m.

Electronic Access to this Document: You may 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) on the internet at the following site: *www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC area at 202–512–0000.

Martha Kanter,

Under Secretary, U.S. Department of Education.

[FR Doc. 2012–9153 Filed 4–16–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41, Code of Federal Regulations, Section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Site-Specific Advisory Board (EM SSAB) will be renewed for a two-year period beginning April 11, 2012.

The Board provides advice and recommendations to the Assistant Secretary for Environmental Management (EM) concerning issues affecting the EM program at various sites. These site-specific issues include cleanup standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities.

Additionally, the renewal of the EM SSAB has been determined to be essential to the conduct of the Department of Energy's (DOE) mission and to be in the public interest in connection with the performance of duties imposed on the DOE by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Alexander, Designated Federal Officer, by telephone at (202) 586–7711.

Issued in Washington, DC, on April 11, 2012.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2012–9180 Filed 4–16–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 19, 2012 10 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

980TH—MEETING; REGULAR MEETING

[April 19, 2012, 10 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Market Update.
	Electric	
E–1	ER12–480–000	Midwest Independent Transmission System Operator, Inc. and Transmission Owners of the Midwest Independent Transmission System Operator, Inc.
E–2	ER09–1063–004	PJM Interconnection, L.L.C.
E–3	AD12–14–000	Open Access and Priority Rights on Interconnection Facilities.
	AD11–11–000	Priority Rights to New Participant—Funded Transmission.
E–4	RM11–17–000	Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators.
E–5	RM05–5–020	Standards for Business Practices and Communication Protocols for Public Utilities.
E–6	RM11–11–000	Version 4 Critical Infrastructure Protection Reliability Standards.
E–7	RM12–1–000	Transmission Planning Reliability Standards.
E–8	RM11–18–000	Transmission Planning Reliability Standards.

980TH—MEETING; REGULAR MEETING—Continued

[April 19, 2012, 10 a.m.]

Item No.	Docket No.	Company
E–9	RC08–5–001	U.S. Department of Energy, Portsmouth/Paducah Project Office.
E–10	RC11–5–000	City of Holland, Michigan Board of Public Works.
E–11	ER09–187–000 ER09–187–001. ER10–160–000.	Southern California Edison Company.
E–12	ER12–1155–000	ISO New England, Inc. and New England Power Pool.
E–13	ER12–701–000 ER12–701–001.	New York Independent System Operator, Inc.
E–14	Omitted.	
E–15	Omitted.	
E–16	Omitted.	
E–17	OA09–31–000	Otter Tail Power Company.
E–18	EL12–13–000	PacifiCorp v. Utah Associated Municipal Power Systems.
	Gas	
G–1	RP10–1410–001 RP10–1410–002. RP10–1410–003.	Kern River Gas Transmission Company.
G–2	RP11–1566–003 RP11–1566–004. RP11–1566–008. RP11–1566–009. RP11–1566–011. RP11–2066–001.	Tennessee Gas Pipeline Company, L.L.C.
	Hydro	
H–1	P–12632–004	East Texas Electric Cooperative, Inc.
H–2	P–2299–076	Turlock Irrigation District and Modesto Irrigation District.
H–3	P–2692–048	Duke Energy Carolinas, LLC.
	Certificates	
C–1	CP11–539–000	ANR Pipeline Company.
C–2	CP11–72–000	Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.
C–3	CP07–441–001 CP07–442–001. CP07–443–001. CP07–444–001.	Pacific Connector Gas Pipeline, LP Jordan Cove Energy Project, L.P.
C–4	Omitted.	
C–5	Omitted.	
C–6	CP11–128–001	National Fuel Gas Supply Corporation.

Dated: April 12, 2012.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2012–9275 Filed 4–13–12; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP12–318–001]

Texas Eastern Transmission, L.P.; Notice of Response

Take notice that on March 19, 2012, pursuant to the February 16, 2012 order of the Federal Energy Regulatory Commission in the above-captioned proceeding Texas Eastern Transmission, LP (Texas Eastern) submits its response to show cause why it should not be required to file revisions to its tariff concerning reservation charge credits.

Any party desiring to file responses to Texas Eastern's March 19, 2012 submission must do so on or before 5 p.m. Eastern time on April 18, 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 St. NE., Washington, DC 20426.

The filings in the above proceedings 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.

Comment Date: 5 p.m. Eastern time on Wednesday, April 18, 2012.

Dated: April 10, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9121 Filed 4–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

[DOE/EIS–0483]

Estes to Flatiron Substation Transmission Lines Rebuild Project, Larimer County, CO

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings; Notice of Floodplain and Wetlands Involvement.

SUMMARY: Western Area Power Administration currently owns and operates two 115-kilovolt transmission lines on two separate rights-of-way (ROW) located between Flatiron Reservoir (near Loveland, Colorado) and the town of Estes Park, Colorado. Each transmission line is approximately 16 miles long. Western is proposing to remove one transmission line and abandon the ROW. The remaining transmission line would be rebuilt along the existing ROW with taller steel monopoles and would be double-circuited (i.e., six conductors per pole).

Western determined that an environmental impact statement (EIS) is the appropriate level of NEPA review. Therefore, Western will prepare an EIS on its proposal to upgrade and co-locate two existing separate transmission lines on a double-circuit transmission line on one ROW in accordance with NEPA, the DOE NEPA Implementing Procedures, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA. Portions of Western's proposal may affect floodplains and wetlands, so this Notice of Intent (NOI) also serves as a notice of proposed floodplain or wetland action in accordance with DOE floodplain and wetland environmental review requirements.

DATES: This notice initiates a 90-day public scoping process to solicit public comments and identify issues, opportunities, and concerns that should be considered in the preparation of a Draft EIS. The scoping period will end on July 16, 2012, or 15 days after the date of the last public scoping meeting, whichever is later. In order to ensure consideration in the Draft EIS, all comments must be received prior to the close of the scoping period. Western will provide additional opportunities for public participation upon publication of the Draft EIS. The public will be notified in advance of future opportunities for participation as the EIS is prepared.

To provide the public with an opportunity to review the proposal and project information, Western expects to hold two public meetings: One meeting in Estes Park, Colorado and one meeting in Loveland, Colorado during the public scoping period. Western will announce the dates and locations of the public scoping meetings through local news media, newsletters, and posting on the Western Web site at *http://ww2.wapa.gov/sites/western/transmission/infrastruct/Pages/Estes-Flatiron.aspx,* at least 15 days prior to each meeting. Western will consider all comments on the scope of the EIS received or postmarked by the end of scoping. The public is invited to submit comments on the proposal at any time during the EIS process.

ADDRESSES: Comments related to the proposed Project may be submitted by mail to Tim Snowden, Western Area Power Administration, 5555 E. Crossroads Blvd., P.O. Box 3700, Loveland, CO 80539–3003, fax (970) 461–7213, or email, *RMR_estesflatironeis@wapa.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information on the proposed project, the EIS process, or to receive a copy of the Draft EIS when it is published, contact Tim Snowden by the methods noted above. For general information on the DOE's NEPA review process, contact Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0119, telephone (202) 586–4600 or (800) 472–2756, fax (202) 586–7031.

SUPPLEMENTARY INFORMATION: Western is a Federal power marketing agency within the DOE that markets and delivers Federal wholesale electric power (principally hydroelectric power) to municipalities, rural electric cooperatives, public utilities, irrigation districts, Federal and State agencies, and Native American tribes in 15 western and central states.

Western initially began preparation of an environmental assessment (EA) for the Project. Western's proposal was under a class of actions in the DOE NEPA Implementing Procedures (10 CFR part 1021) that normally requires the preparation of an EA. Subsequent to the EA determination, Western held public meetings and received many written and oral comments from the public and agencies on the proposal during the scoping period. The public expressed several concerns regarding the impacts of the proposal and some of the stakeholders requested evaluation of additional alternatives. Based on these factors, Western determined that an EIS is the more appropriate level of NEPA review.[1] Therefore, Western will prepare an EIS on its proposal to upgrade and co-locate two existing separate transmission lines on a double-circuit transmission line on one ROW.

Western will coordinate with appropriate Federal, State, and local agencies and potentially affected Native American tribes during the preparation of the EIS. The U.S. Department of Agriculture, Forest Service, Arapaho and Roosevelt National Forest (Forest Service) will be a cooperating agency on the EIS since it requires NEPA review to support its decision on whether or not to grant a Special Use Permit for parts of the transmission line located on National Forest Service System lands. Western will invite other Federal, State, local, and tribal agencies with

[1] On November 16, 2011, DOE's Acting General Counsel delegated to Western's Administrator all EIS authorities.

jurisdiction by law or special expertise, with respect to environmental issues, to be cooperating agencies on the EIS, as defined in 40 CFR 1501.6. Such agencies also may make a request to Western to be a cooperating agency. Designated cooperating agencies have certain responsibilities to support the NEPA process, as specified in 40 CFR 1501.6(b).

Purpose and Need for Agency Action

Western's purpose and need for agency action is to ensure its facilities are up to current safety and reliability standards, accessible for maintenance and emergencies, protected from wildfire, and cost effective for its customers.

Proposed Action

Presently there are two transmission lines on two separate ROWs located between Flatiron Reservoir (near Loveland) and the town of Estes Park. The Estes-Lyons line segment is approximately 16 miles long and was built in 1938. The Estes-Pole Hill and Flatiron-Pole Hill line segments combined are approximately 16 miles long and were built in 1952 as part of the Colorado-Big Thompson Project. The vast majority of wood pole structures on both transmission lines are the original poles and are 60 to 72 years old.

Western's proposed Federal action (proposal) is to combine portions of both transmission lines onto a single ROW between Flatiron Reservoir and Estes Park, Colorado. Portions of both transmission lines would be removed and those portions of the ROWs abandoned. In the remaining ROW, the transmission line would be rebuilt with steel monopole structures replacing the existing wood H-frame structures, in a double-circuit configuration (i.e., six conductors per structure). In some areas, the ROW would be slightly wider than it is at present to accommodate the double circuit transmission line. There would be two short segments of new ROW, located on private land, to connect portions of the existing transmission line segments into a single ROW. There are no new substations or proposed changes to existing substations.

Presently, vehicle access is required along the entire 32 miles of existing ROW for maintenance and wood pole replacement. Most of the existing wood pole structures would need replacement in the near future and some are in need of replacement at this time. With Western's proposal, approximately 16 miles of the existing ROW would be eliminated along with the associated access roads.

Currently, the two transmission lines cross Roosevelt National Forest System lands. Approximately 1.65 miles of transmission line and ROW would be removed and 2.16 miles of transmission line would be rebuilt on National Forest System lands, under Western's proposal.

Alternatives

Under the No-Action (i.e., baseline) alternative, the two transmission lines would continue to operate on the existing and separate ROWs. Records indicate that 70 to 80 percent of the 32 miles of transmission lines would require replacement within the near future. This would require replacing transmission line structures along both existing ROWs. Access to the transmission lines is limited and replacement of structures would require additional or improved access on both ROWs. The No-Action alternative would require that the existing 30-foot ROW on the Estes-Lyons section be widened to meet current safety standards. Other alternatives may be identified through the EIS scoping process. Comments received during the EA scoping process and comments provided in response to this NOI and the EIS scoping meetings will be considered in defining the scope of the EIS.

Floodplain or Wetland Involvement

Floodplains and wetlands are in the project area. Since the proposal may involve action in floodplains or wetlands, this NOI also serves as a notice of proposed floodplain or wetland action. The EIS will include an assessment of impacts to floodplains and wetlands, and, if required, a floodplain statement of findings following DOE regulations for compliance with floodplain and wetlands environmental review (10 CFR part 1022).

Environmental Issues

Western's proposed Project area is located between Flatiron Reservoir and Estes Park, Colorado in a fairly mountainous territory and crosses open and developed areas. The area is characterized by rugged terrain with scattered developments set against the backdrop of Rocky Mountain National Park. The EIS will review relevant environmental information and will analyze the potential impacts on the full range of potentially affected environmental resources.

Public Participation

Interested parties are invited to participate in the scoping process to help define the scope of the EIS, significant resources, and issues to be analyzed in depth, and to eliminate from detailed study issues that are not pertinent. The EIS scoping process will involve all interested agencies (Federal, State, county, and local), Native American tribes, public interest groups, businesses, affected landowners, and individual members of the public.

Western has previously consulted with potentially affected or interested tribes to jointly evaluate and address the potential effects on cultural resources, traditional cultural properties, or other resources important to the tribes in the proposed Project area. Western will contact previously identified interested tribes and inform them that an EIS is planned. Any government-to-government consultations will be conducted in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249), the President's memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments* (59 FR 22951), DOE-specific guidance on tribal interactions, and applicable natural and cultural resources laws and regulations.

Western will announce public EIS scoping meetings through local news media, newsletters, and posting on the Western Web site at *http://ww2.wapa.gov/sites/western/transmission/infrastruct/Pages/Estes-Flatiron.aspx,* at least 15 days prior to each meeting. Attendees will be able to speak directly with Western and the Forest Service at the EIS scoping meetings about Western's proposal. The public is encouraged to provide information and comments on issues it believes Western should address in the EIS. Comments may be broad in nature or restricted to specific areas of concern. After gathering comments on the scope of the EIS, Western will address those issues raised in the EIS. In addition, Western will use the results of the EA scoping process to help define the scope of the EIS. Comments on Western's proposal will be accepted at any time during the EIS process, and may be directed to Western as described under **ADDRESSES** above. Comments received outside of the designated comment periods may be addressed in the Draft EIS, otherwise they will be addressed later in the process, such as in the Final EIS, if practicable.

The EIS process will include this NOI, local EIS scoping meeting notifications,

public scoping meetings; consultation and coordination with appropriate Federal, State, county, and local agencies and tribal governments; involvement with affected landowners; distribution of and public review and comment on the Draft EIS; a formal public hearing or hearings on the Draft EIS; distribution of a published Final EIS; and publication of separate Records of Decision in the **Federal Register** by Western and the Forest Service.

Dated: April 6, 2012.

Timothy J. Meeks,

Administrator.

[FR Doc. 2012–9179 Filed 4–16–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9514–9]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1686.09; NESHAP for the Secondary Lead Smelter Industry; 40 CFR part 63, subparts A and X; was approved on 03/02/2012; OMB Number 2060–0296; expires on 03/31/2015; Approved without change.

Comment Filed

EPA ICR Number 2452.01; NESHAP for Pulp and Paper Production; in 40 CFR part 63 subparts A and S; OMB filed comment on 03/02/2012.

EPA ICR Number 2457.01; NESHAP for Group IV Polymers and Resins; in 40 CFR part 63 subparts A and JJJ; OMB filed comment on 03/02/2012.

EPA ICR Number 1811.08; NESHAP for Polyether Polyol Production; in 40 CFR part 63, subparts A and PPP; OMB filed comment on 03/06/2012.

Withdrawn and Continue

EPA ICR Number 2258.02; $PM_{2.5}$ NAAQS Implementation Rule (Renewal); Withdrawn from OMB on 03/22/2012.

EPA ICR Number 2313.02; Ambient Ozone Monitoring Regulations: Revisions to Network Design Requirements (Final Rule); Withdrawn from OMB on 03/20/2012.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2012–9107 Filed 4–16–12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0250; FRL–9515–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Wet-Formed Fiberglass Mat Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 17, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0250, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 *FR* 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0250, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Wet-formed Fiberglass Mat Production (Renewal).

ICR Numbers: EPA ICR Number 1964.05, OMB Control Number 2060–0496.

ICR Status: This ICR is scheduled to expire on June 30, 2012. Under OMB

regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart HHHH. These standards apply to new and existing component processes at industrial facilities that manufactured wet-formed fiberglass mat including preparation of glass fibers, formation of fibers into a fiberglass mat, saturation with urea-formaldehyde binder solution, curing and drying the binder-coated fiberglass mat, cooling the mat, and trimming, cutting, and packaging. This information is being collected to assure compliance with 40 CFR part 63, subpart HHHH.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart HHHH, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that has been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 107 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of Wet-formed fiberglass mat production.

Estimated Number of Respondents: 14.

Frequency of Response: Initially, occasionally, annually, and semiannually.

Estimated Total Annual Hour Burden: 3,421.

Estimated Total Annual Cost: $327,771, which includes $327,771 in labor costs; there are no capital/startup or operation and maintenance (O&M) costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden hours and costs for both the respondents and the Agency as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The increase in the burden and cost reflects the time and cost to conduct performance tests, which is required every five years of the rule, and to review test results. In addition, this ICR uses updated labor rates in estimating the costs for the respondents and the Agency.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9123 Filed 4–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0890; FRL–9515–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; RCRA Expanded Public Participation (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 17, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2011–0890, to (1) EPA, either online using *www.regulations.gov* (our preferred method), or by email to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Pease, (5303P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–0008; fax number: 703–308–8433; email address: *pease.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 6, 2011 (76 *FR* 76158), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2011–0890, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC 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 Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is

that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: RCRA Expanded Public Participation (Renewal).

ICR numbers: EPA ICR No. 1688.07, OMB Control No. 2050–0149.

ICR Status: This ICR is scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 7004(b) of the Resource Conservation and Recovery Act (RCRA) gives EPA broad authority to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under RCRA. In addition, the statute specifies certain public notices (i.e., radio, newspaper, and a letter to relevant agencies) that EPA must provide before issuing any RCRA permit. The statute also establishes a process by which the public can dispute a permit and request a public hearing to discuss it. EPA carries out much of its RCRA public involvement at 40 CFR Parts 124 and 270.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 91 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Businesses and other for-profit.

Estimated Number of Respondents: 33.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 3,005 hours.

Estimated Total Annual Cost: $195,914, includes $3,549 annualized capital and O&M costs.

Changes in the Estimates: There is no change in the total estimated burden hours and an increase of $52 in burden cost due to recalculations in capital costs for this renewal.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9122 Filed 4–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0243; FRL–9515–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Coke Oven Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 17, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0243, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0243, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further

information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Coke Oven Batteries (Renewal).

ICR Numbers: EPA ICR Number 1362.09, OMB Control Number 2060–0253.

ICR Status: This ICR is scheduled to expire on May 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart L.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart L, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,908 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of coke oven batteries.

Estimated Number of Respondents: 19.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 80,120.

Estimated Total Annual Cost: $7,676,989, which includes $7,676,989 in labor costs, and no capital/startup costs or operation and maintenance (O&M) costs.

Changes in the Estimates: There is a decrease of one hour in the respondent burden hours in this ICR compared to the most recently approved ICR due to rounding errors. This ICR was updated with more accurate burden calculations.

There is an increase in burden costs from the most recently approved ICR. This increase is not due to any program changes. The change in cost estimates occurred because this ICR uses updated labor rates in calculating the burden costs for both the respondents and the Agency.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9108 Filed 4–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0901; FRL–9514–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Prevention of Significant Deterioration and Nonattainment New Source Review (Renewal); EPA ICR No. 1230.29

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 17, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2011–0901, to (1) the EPA online using *www.regulations.gov* (our preferred method), by email at *a-and-r-docket@epa.gov* or by mail to: Air and Radiation Docket and Information Center, Mailcode: 28221T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) the OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. David Painter, Air Quality Policy Division, Office of Air Quality Planning and Standards, (C504–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5515; fax number: (919) 541–5509; email address: *painter.david@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA has submitted the following ICR to the OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 25, 2011 (76 FR 72700), the EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). The EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2011–0901, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use the EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that the EPA's policy is that public comments, whether

submitted electronically or on paper, will be made available for public viewing at *www.regulations.gov* as the EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI) or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Prevention of Significant Deterioration and Nonattainment New Source Review (Renewal).

ICR numbers: EPA ICR No. 1230.29, OMB Control No. 2060–0003.

ICR Status: This ICR is scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at the OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Part C of Title I of the Clean Air Act (Act) (42 U.S.C. 7401 *et seq.*)—''Prevention of Significant Deterioration'' (PSD), and Part D—''Plan Requirements for Nonattainment Areas,'' require all states to adopt preconstruction review programs for new or modified major stationary sources of air pollution. In addition, the provisions of section 110 of the Act include a requirement for states to have a preconstruction review program to manage the emissions from the construction and modification of any stationary source of air pollution to assure that the National Ambient Air Quality Standards (NAAQS) are achieved and maintained. Section 176(c) of the Act requires that all federal actions conform with the state implementation plans (SIPs) to attain and maintain the NAAQS. Depending on the type of action, the federal entities must collect information themselves, hire consultants to collect the information or require applicants/sponsors of the federal action to provide the information.

Implementing regulations for these three programs are promulgated at 40 CFR 51.160 through 51.166; 40 CFR part 51, Appendix S; and 40 CFR 52.21 and 52.24. In order to receive a construction permit for a major new source or major modification, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory ''new source review'' (NSR) requirements. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

Reviewing authorities, either state, local or federal, review the permit application and provide for public review of the proposed project and issue the permit based on consideration of all technical factors and public input. The EPA, more broadly, reviews a fraction of the total applications and audits the state and local programs for their effectiveness. Consequently, information prepared and submitted by the source is essential for the source to receive a permit, and for federal, state and local environmental agencies to adequately review the permit application and thereby properly administer and manage the NSR programs.

Since the previous renewal of this ICR, the EPA has filled regulatory voids that existed in Indian country (where state NSR programs do not apply) by promulgating a Part D program and a minor NSR program for Indian country. (The EPA was already implementing a Part C program in Indian country.) The implementing regulations for these programs are at 40 CFR 49.151 through 49.173. The EPA acts as the reviewing authority for these programs.

Information that is collected is handled according to the EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2). *See* also section 114(c) of the Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 49 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Industrial plants; state and local reviewing authorities.

Estimated Number of Respondents: 87,481, including 87,369 industry sources and 112 state and local reviewing authorities.

Frequency of Response: Responses generally are associated with NSR permit actions, which are required on occasion when facilities wish to construct or modify. In addition, existing minor sources will be required to submit a one-time registration during implementation of the minor NSR program in Indian country. Finally, state and local reviewing authorities are required to submit SIP revisions on occasion when the NSR regulations change.

Estimated Total Annual Hour Burden: 7,934,340 hours.

Estimated Total Annual Cost: $707,226,735, including $694,641,672 in labor costs and $12,585,063 in annualized capital or start-up costs.

Changes in the Estimates: The burden has changed since the previous renewal due in part to an increase in the number of responses and per-permit burden due to the addition of GHGs to the PSD program. In addition, the extension of minor NSR and part D programs to Indian country to fill these regulatory gaps has increased the number of responses and the overall burden. Finally, the burden has been increased by the addition of provisions in the PSD program that will allow full integration of $PM_{2.5}$.

Also contributing to the increase in burden has been a change in the labor rates. As explained in section 6(b)(i), in order to improve the accuracy of burden estimates, the rates were recalculated using 2011 values for wages.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9103 Filed 4–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0259; FRL–9345–5]

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 March 1, 2012 to March 23, 2012, 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 May 17, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0259, 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; 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 March 1, 2012 to March 23, 2012, 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—45 PMNS RECEIVED FROM 03/01/12 TO 3/23/12

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0216	03/01/2012	05/29/2012	CBI	(G) Laundry and auto dishwash additive.	(G) Carbohydrate, polymers with acrylic acid and maleic anhydride, maltodextrin and methacrylic acid, sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(Ho)s(O)2]2O2) sodium salt (1:2)-initiated.
P–12–0217	03/01/2012	05/29/2012	CBI	(G) Laundry and auto dishwash additive.	(G) Carbohydrate, polymers with acrylic acid maltodextrin, sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(Ho)s(O)2]2O2) sodium salt (1:2)-initiated.
P–12–0218	03/01/2012	05/29/2012	CBI	(G) Laundry and auto dishwash additive.	(G) Carbohydrate, telomers with acrylic acid, iso-pr alcohol, maltodextrin, 3-mercaptopropanoic acid and styrene, sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(Ho)s(O)2]2O2) sodium salt (1:2)-initiated.
P–12–0219	03/01/2012	05/29/2012	CBI	(G) Laundry and auto dishwash additive.	(G) Carbohydrate, polymers with acrylic acid and maleic anhydride, maltodextrin, and methacrylic acid, ammonium salt, hydrogen peroxide- and peroxydisulfuric acid ([(Ho)s(O)2]2O2) sodium salt (1:2)-initiated.
P–12–0220	03/04/2012	06/01/2012	Cytec Industries, Inc	(G) Coating resin	(G) Substituted carbomonocycle, polymers with reduced alkyl esters of reduced polymerized oxidized halosubstituted alkene, polyalkanoic acid, substituted alkenyl ester-blocked.
P–12–0221	03/05/2012	06/02/2012	Dow Chemical Company.	(G) Polymer intermediate.	(G) Acrylic polymer.
P–12–0222	03/06/2012	06/03/2012	CBI	(G) Additive for property improvement in films and coatings.	(G) Alkyl acrylate cross-linked copolymer.
P–12–0223	03/06/2012	06/03/2012	CBI	(G) Solvent	(G) Glycol ether.
P–12–0224	03/07/2012	06/04/2012	CBI	(G) A component in dishwashing applications.	(G) Ester.
P–12–0225	03/07/2012	06/04/2012	American Chemical Ltd.	(S) Special catalyst for elastomer and molded two-component polyurathanes.	(S) Diphenyl[mu-[(tetrapropenyl)succinato(2-)-o:o′]]dimercury(phenylmercury tetrapropenylsuccinate)*.

TABLE I—45 PMNS RECEIVED FROM 03/01/12 TO 3/23/12—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0226	03/07/2012	06/04/2012	Carboline Company ...	(S) The PMN substances are components of a crosslinked phenolic-epoxy coating system used to produce a water-immersion lining on concrete and steel. The coating may also be used on tanks for crude oil service, brine and water/oil mixtures. The PMN substances extend the pot life of the coating system. Once the phenolic-erpoxy resin cures, none of the pmn substances remain in the coating.	(G) Alkyl ketimines; polymeric ketimines.
P–12–0227	03/07/2012	06/04/2012	Zeon Chemicals L.P ..	(S) Used to make molds for optical lenses/prisms.	(G) Polycycloolefin polymer.
P–12–0228	03/08/2012	06/05/2012	CBI	(G) Coating applications.	(G) Substituted quaternary alkyl ammonium chloride.
P–12–0229	03/12/2012	06/09/2012	Huntsman Corporation.	(S) Exhaust dyeing of cellulosic fabrics.	(G) Subsituted aromatic diazo sulfonic acid salts.
P–12–0230	03/12/2012	06/09/2012	CBI	(G) Processing aid ...	(G) Alkylaminediol acetate salt.
P–12–0231	03/12/2012	06/09/2012	CBI	(G) Processing aid ...	(G) Ethoxylated alkylaminediol acetate salt.
P–12–0232	03/12/2012	06/09/2012	The Dial Corporation, a Henkel Company.	(S) Fragrance for household cleaning products and laundry.	(S) 1*H,*3*H,*5*H*-oxazolo[3,4-c]oxazole, dihydro-3,5-bis[1-methyl-2-[4-(1-methylethylphenyl]ethyl]-.
P–12–0233	03/12/2012	06/09/2012	The Dial Corporation, a Henkel Company.	(S) Fragrance for household cleaning products and laundry.	(S) 1*H,*3*H,*5*H*-oxazolo[3,4-c]oxazole, dihydro-3,5-bis(1-methyldecyl)-.
P–12–0234	03/12/2012	06/09/2012	The Dial Corporation, a Henkel Company.	(S) Fragrance for household cleaning products and laundry.	(S) 1*H,*3*H,*5*H*-oxazolo[3,4-c]oxazole, 3,5-bis(2,4-dimethyl-3-cyclohexen-1-yl)dihydro-.
P–12–0235	03/14/2012	06/11/2012	CBI	(G) Adhesive for open, non-descriptive use.	(G) Polyesterurethane.
P–12–0236	03/16/2012	06/13/2012	CBI	(G) Additive, open, non-dispersive use.	(G) Polyester amine adduct.
P–12–0237	03/16/2012	06/13/2012	CBI	(G) Additive, open, non-dispersive use.	(G) Polyester amine adduct.
P–12–0238	03/16/2012	06/13/2012	CBI	(G) Additive, open, non-dispersive use.	(G) Polyester amine adduct.
P–12–0239	03/19/2012	06/16/2012	CBI	(G) Lamination adhesive.	(G) Aliphatic polyurethane.
P–12–0240	03/19/2012	06/16/2012	CBI	(G) Processing aid ...	(G) Ammonium molybdenum tungsten nickel hydroxide maleate.
P–12–0241	03/19/2012	06/16/2012	CBI	(G) Water and oil repellant.	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, telomers with C_{18}-26-alkyl acrylate, 1-dodecanethiol, *N*-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate, 2,2′-[1,2-diazenediylbis(1-methylethylidene)]-bis[4,5-dihydro-1*H*-imidazole] hydrochloride (1:2)-initiated.

TABLE I—45 PMNS RECEIVED FROM 03/01/12 TO 3/23/12—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0242	03/19/2012	06/16/2012	CBI	(G) Water and oil repellant.	(G) 2-propenoic acid, 2-methyl-, C_{16}-18 alkyl esters, telomers with 3-chloro-2-hydroxypropyl methacrylate,1-dodecanethiol, *N*-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate and rel-(1R,2R,4R)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl methacrylate, 2,2′-[1,2-diazenediylbis(1-methylethylidene)]-bis[4,5-dihydro-1*H*-imidazole] hydrochloride (1:2)-initiated.
P–12–0243	03/16/2012	06/13/2012	Wacker Chemical Corporation.	(G) Additive to improve the impact strength of thermoplastic and thermoset polymer systems, especially at low temperatures.	(G) Copolymer of vinyl/alkyl siloxanes and methacrylic acid derivatives.
P–12–0244	03/20/2012	06/17/2012	CBI	(G) Coatings	(G) Cycloaliphatic anhydride polymer with aliphatic polyols and aliphatic acid.
P–12–0245	03/20/2012	06/17/2012	Shepherd Color Company.	(S) Colored pigment used.	(S) Niobium sulfur tin zinc oxide.
P–12–0246	03/20/2012	06/17/2012	CBI	(G) Crosslinker	(G) Methyl, phenyl, amino-functional siloxanes and silsesquixane.
P–12–0247	03/21/2012	06/18/2012	CBI	(G) Polyester resin solution.	(G) Alkyl carboxylic acid, oxiranyl alkyl ester, polymer with cycloalkyl dicarboxylic acid anhydride, alkyl alcohol ester.
P–12–0248	03/21/2012	06/18/2012	CBI	(G) Resin (open, non-dispersive use).	(G) Polyester type polyurethane resin.
P–12–0249	03/22/2012	06/19/2012	CBI	(G) Chemical intermediate.	(G) Vegetable oil, modified products.
P–12–0250	03/22/2012	06/19/2012	CBI	(G) Chemical intermediate.	(G) Vegetable oil, modified products.
P–12–0251	03/22/2012	06/19/2012	CBI	(G) Chemical intermediate.	(G) Vegetable oil, modified products, esters.
P–12–0252	03/22/2012	06/19/2012	CBI	(G) Chemical intermediate.	(G) Esters.
P–12–0253	03/22/2012	06/19/2012	CBI	(G) Chemical intermediate.	(G) Esters.
P–12–0254	03/22/2012	06/19/2012	Lubrigreen biosynthetics.	(G) Lubricant base oil.	(S) Fatty acids, C_8-18 and C_{18}-unsaturated, reaction products with isomerized oleic acid homopolymer iso-bu ester.
P–12–0255	03/22/2012	06/19/2012	Lubrigreen biosynthetics.	(G) Lubricant base oil.	(S) Fatty acids, coco, reaction products with isomerized oleic acid homopolymer, iso-bu ester.
P–12–0256	03/22/2012	06/19/2012	Cytec industries, Inc	(G) Mineral processing collector.	(G) Dialkyldithiophosphate salt.
P–12–0257	03/22/2012	06/19/2012	CBI	(G) Destructive use	(G) Brominated by-product stream.
P–12–0258	03/22/2012	06/19/2012	CBI	(G) Destructive use	(G) Brominated aliphatic alcohol.
P–12–0259	03/22/2012	06/19/2012	CBI	(G) Destructive use	(G) Brominated by-product stream.
P–12–0260	03/22/2012	06/19/2012	CBI	(G) Destructive use	(G) Brominated aliphatic alcohol.

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 03/01/12 TO 03/23/12

T–12–0006	03/04/2012	04/17/2012	Cytec Industries, Inc.	(G) Coating resin	(G) Substituted carbomonocycle, polymers with reduced alkyl esters of reduced polymd. oxidized halosubstituted alkene, polyalkanoic acid, substituted alkenyl ester-blocked.

TABLE II—2 TMEs RECEIVED FROM 03/01/12 TO 03/23/12—Continued

T–12–0007	03/22/2012	05/05/2012	Cytec Industries, Inc.	(G) Mineral processing collector.	(G) Dialkyldithiophosphate 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—27 NOCs RECEIVED FROM 03/01/12 TO 03/23/12

Case No.	Received date	Commencement notice end date	Chemical
J–11–0004	03/10/2012	01/30/2012	(G) T.reesei3417.
P–04–0623	03/07/2012	08/15/2006	(S) Hexanoic acid, 2-ethyl-, C_8-12-alkyl esters.
P–09–0362	03/07/2012	02/21/2012	(S) Poly(oxy-1,2-ethanediyl), .alpha.-sulfo-.omega.-(tridecyloxy)-, branched, sodium salts.
P–10–0013	03/21/2012	03/14/2012	(G) Manganese sulfonate derivative.
P–10–0368	03/01/2012	02/17/2012	(G) Epoxy-arylamine polymer.
P–10–0449	03/01/2012	02/17/2012	(G) Polyester resin.
P–10–0531	03/01/2012	02/17/2012	(G) Unsaturated polyester resin.
P–10–0568	03/01/2012	02/17/2012	(G) Unsaturated polyester resin.
P–11–0231	03/20/2012	02/21/2012	(G) Cashew nutshell liquid amine polymer.
P–11–0295	03/21/2012	02/26/2012	(G) Reaction product from the oxidation of D-glucose, neutralized with NAOH.
P–11–0296	03/22/2012	02/26/2012	(G) Reaction products from the oxidation of D-glucose, neutralized with sodium hydroxide and potassium hydroxide.
P–11–0344	03/02/2012	12/12/2011	(G) Polyaromatic heterocycle precursor.
P–11–0345	03/02/2012	12/12/2011	(G) Heterocyclic organic intermediate.
P–11–0346	03/02/2012	12/28/2011	(G) Halogenated aromatic heterocyclic intermediate.
P–11–0384	03/13/2012	02/02/2012	(G) Fluorinated alkylsulfonamidol urethane polymer.
P–11–0408	03/19/2012	02/29/2012	(G) Polycarbodiimide modified diisocyanate.
P–11–0481	03/11/2012	02/23/2012	(S) 1,2-cyclohexanedicarboxylic acid, 1-butyl 2-(phenylmethyl) ester.
P–11–0492	03/16/2012	02/17/2012	(G) Glycine derivative.
P–11–0586	03/19/2012	03/11/2012	(G) Substituted phthalocyanine derivative.
P–11–0617	03/19/2012	03/11/2012	(G) Substituted xanthene derivative.
P–11–0638	03/23/2012	03/14/2012	(G) Aminocarbonyl ammonio carboxy modified polyolefin.
P–11–0652	03/01/2012	02/28/2012	(S) 1,4-cyclohexanedicarboxylicc acid, 1,4-dibutyl ester.
P–11–0654	03/06/2012	03/01/2012	(S) Phenol, 2-[[[3-(1*H*-imidazol-1-yl)propyl]imino]phenylmethyl]-5-(octyloxy)-.
P–12–0001	03/23/2012	03/12/2012	(G) Aromatic isocyanate, alkyl phenol-blocked.
P–12–0039	03/08/2012	03/07/2012	(G) Acrylic polymer.
P–12–0049	03/12/2012	02/21/2012	(G) Alkylcatechol-substituted alkoxy-substituted calixarene.
P–12–0071	03/08/2012	03/02/2012	(S) Disphosphoric acid, magnesium salt (1:1).

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: April 9, 2012.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–9227 Filed 4–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9660–6]

Proposed CERCLA Administrative Cost Recovery Settlement; Estate of Benjamin C. Schilberg, Cadlerock Properties Site, Ashford and Willington, CT

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past costs concerning the Cadlerock Properties Superfund Site in Ashford and Willington, Connecticut with the following settling party: Estate of Benjamin C. Schilberg. The settlement requires the settling party to pay $170,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at 5 Post Office Square, Boston, MA 02109–3912.

DATES: Comments must be submitted by May 17, 2012 of this notice.

ADDRESSES: Comments should be addressed to Barbara Gutierrez, Attorney-Advisor, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW. (2272A), Washington, DC 20460 (Telephone No. 202–562–4292) and should refer to: In re: Cadlerock Properties Superfund Site, U.S. EPA Docket No. 01–2012–0017.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Barbara Gutierrez, Attorney-Advisor, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW. (2272A), Washington, DC 20460 (Telephone No. 202–562–4292; Email *Gutierrez.barbara@epa.gov*).

Dated: April 10, 2012.

James T. Owens, III,

Director, Office of Site Remediation and Restoration.

[FR Doc. 2012–9233 Filed 4–16–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 2, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Lumpkin Family Foundation; Pinon Tree Holding Company, LLC, SKL Investment Group, LLC; Benjamin I. Lumpkin GRIT, with trustees Steven L. Grissom, all of Mattoon, Illinois; and David R. Hodgman, Evanston, Illinois; Elizabeth L. Celio GRIT, Mattoon, Illinois; with trustees Steven L. Grissom and David R. Hodgman; Richard A. Lumpkin 1970 Trust, New York, New York; Anne R. Sparks, John W. Sparks, and Zachary Whitten, all of Albuquerque, New Mexico; Benjamin I. Lumpkin, Chicago, Illinois; Elizabeth L. Celio, Oak Park, Illinois; Barbara S. Federico, Lantana, Florida; Christina S. Duncan, and Ila Duncan, both of Wilton, Connecticut; Pamela R. Keon, Elizabeth Vitale, and William Vitale, all of Mill Valley, California; Margaret DeWyngaert, Isabelle DeWyngaert, and Susan K. DeWyngaert, all of Philadelphia, Pennsylvania; Joseph J. Keon, III, Greenbrae, California; Katherine S. Keon, San Francisco, California; Margaret K. Partridge-Hicks, and Richard A. Lumpkin,* both of Mattoon, Illinois; all as members of the Lumpkin family, and as trustees for other Lumpkin family trusts, as a group acting in concert; to retain control and acquire additional voting shares of First Mid-Illinois Bancshares, Inc., and thereby indirectly retain control and acquire additional voting shares of First Mid-Illinois Bank & Trust, National Association, both in Mattoon, Illinois.

Board of Governors of the Federal Reserve System, April 12, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–9157 Filed 4–16–12; 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 applications will also 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 May 11, 2012.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *B2B Holdings, Inc.,* Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Stockmens National Bank in Cotulla, Cotulla, Texas.

Board of Governors of the Federal Reserve System, April 12, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–9156 Filed 4–16–12; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 12–06; Docket 2012–0004; Sequence 2]

Privately Owned Vehicle Mileage Reimbursement Rates

AGENCY: Office of Governmentwide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of FTR Bulletin 12–06, Adjusted Calendar Year (CY) 2012 Privately Owned Vehicle Mileage Reimbursement Rates.

SUMMARY: The General Services Administration's (GSA) special review of privately owned vehicle (POV) mileage reimbursement rates has resulted in adjusting the CY 2012 rates for the use of privately owned automobiles (POA), POAs when Government owned automobiles (GOA) are authorized, privately owned motorcycles, and privately owned airplanes. FTR Bulletin 12–06 establishes these adjusted CY 2012 mileage reimbursement rates ($0.555 for POAs, $0.23 for POAs when a GOA is authorized, $0.525 for privately owned motorcycles, and $1.31 for privately owned airplanes) pursuant to the process discussed below. This notice of subject bulletin is the only notification of revisions to the POV rates to agencies other than the changes posted on the GSA Web site. GSA determined these rates by studying various factors; such as the cost of fuel, the depreciation of the original vehicles costs, maintenance and insurance.

DATES: This notice is effective the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For clarification of content, please contact

Mr. Cy Greenidge, OGP, Office of Asset and Transportation Management, at (202) 219–2349, or by email at *travelpolicy@gsa.gov.* Please cite Notice of FTR Bulletin 12–06.

SUPPLEMENTARY INFORMATION:

Change in standard procedure

GSA posts the POV mileage reimbursement rates, formerly published in 41 CFR Chapter 301, solely on the Internet at *www.gsa.gov/ftr.* This process, implemented in FTR Amendment 2010–07 (75 FR 72965, Nov. 29, 2010), ensures more timely updates in mileage reimbursement rates by GSA for Federal employees on official travel. Notices published periodically in the **Federal Register**, such as this one, and the changes posted on the GSA Web site, now constitute the only notification of revisions to privately owned vehicle reimbursement rates for Federal agencies.

Dated: April 11, 2012.

Janet Dobbs,

Deputy Associate Administrator.

[FR Doc. 2012–9168 Filed 4–16–12; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on May 24, 2012, from 9 a.m. to 3 p.m./Eastern Time.

Location: Washington Marriott, 1221 22nd Street NW., Washington DC 20037. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

Contact Person: Mary Jo Deering, Office of the National Coordinator, HHS, 330 C Street SW., Washington, DC 20201, 202–260–1944, Fax: 202–690–6079, email: *maryjo.deering@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Clinical Operations, Vocabulary Task Force, Clinical Quality, Implementation, and Enrollment Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 17, 2011. Oral comments from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Mary Jo Deering at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: April 6, 2012.

Mary Jo Deering,

Senior Policy Adviser, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–9132 Filed 4–16–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on May 2, 2012, from 9:30 a.m. to 3 p.m./Eastern Time.

Location: Washington Marriott, *Location:* Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov*.

Contact Person: Mary Jo Deering, Office of the National Coordinator, HHS, 330 C Street SW., Washington, DC 20201, 202–260–1944, Fax: 202–690–6079, email: *maryjo.deering@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, and updates from ONC and other Federal agencies. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroup's meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Mary Jo Deering at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: April 6, 2012.

Mary Jo Deering,

Senior Policy Advisor, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–9133 Filed 4–16–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Breast Cancer in Young Women (ACBCYW); Correction

Correction: This notice was published in the **Federal Register** on March 20, 2012, Volume 77, Number 54, Page 16232. The meeting time and date listed below is canceled:

Time and Date: 8 a.m.–12 p.m., April 20, 2012.

Contact Person for More Information: Temeika L. Fairley, Ph.D., Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 5770 Buford Hwy, NE., Mailstop K52, Atlanta, Georgia 30341, Telephone (770) 488–4518, Fax (770) 488–4760, Email: *acbcyw@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 Agency for Toxic Substances and Disease Registry.

Dated: April 5, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–9212 Filed 4–16–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Grants to States for Access and Visitation.

OMB No.: 0970–0204.

Description: On an annual basis, States must provide OCSE with data on programs that the Grants to States for Access and Visitation Program has funded. These program reporting requirements include, but are not limited to, the collection of data on the number of parents served, types of services delivered, program outcomes, client socio economic data, referrals sources, and other relevant data.

Respondents: State Child Access and Visitation Programs and State and/or Local Service Providers.

ANNUAL BURDEN ESTIMATES

Instrument: State and Local Child Access Program Survey	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Part I: 54 states/jurisdictions	54	1	16	864
Part II: 300 local service grantees (estimated)	300	1	16	4800

Estimated Total Annual Burden Hours: 5,664.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–9162 Filed 4–16–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0262]

Withdrawal of Approval of Part of a New Animal Drug Application; Tiamulin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of those parts of a new animal drug application (NADA) for a tiamulin Type A medicated article that pertain to the production indications for use of increased rate of weight gain and improved feed efficiency in swine. This action is being taken at the sponsor's request because this product is no longer marketed for these uses.

DATES: Withdrawal of approval is effective *April 17, 2012.*

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, *cindy.burnsteel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc. (Novartis), 3200 Northline Ave., suite 300, Greensboro, NC 27408, has requested that FDA withdraw approval of those parts of NADA 139–472 for DENAGARD (tiamulin) Type A medicated article pertaining to the production indications for use of increased rate of weight gain and improved feed efficiency in swine. Novartis requested voluntary withdrawal of approval of these indications for use because this product is no longer marketed for these uses. Revised product labeling reflecting the withdrawal of these indications has been approved in a supplement to NADA 139–472.

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of 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 those parts of NADA 139–472 pertaining to the production indications for use of increased rate of weight gain and improved feed efficiency in swine are hereby withdrawn, effective April 17, 2012.

Elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of those parts of NADA 139–472.

Dated: March 21, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–9195 Filed 4–16–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1984.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs: Forms (OMB No. 0915–0044)—[Revision]

The HPSL Program provides long-term, low interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The NSL Program provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma in nursing, an associate degree, a baccalaureate degree, or graduate degree in nursing.

Participating HPSL and NSL schools are responsible for determining the eligibility of applicants, making loans, and collecting monies owed by borrowers on their outstanding loans. The Deferment Form (Deferment-HRSA Form 519) provides the schools with documentation of a borrower's eligibility for deferment. The Annual Operating Report (AOR–HRSA Form 501) relates to HPSL and NSL program operations and financial activities, and provides the Federal Government with information from participating active schools, as well as schools that no longer grant loans, but are required to report and maintain program records, student records, and repayment records until all student loans are repaid in full and all monies due to the Federal Government are returned.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Deferment—HRSA Form 519	3,234	1	3,234	0.533333	1,725
AOR–HRSA—Form 501	834	1	834	12.000000	10,008
Total	4,068		4,068		11,733

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: April 10, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–9134 Filed 4–16–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

''Low Income Levels'' Used for Various Health Professions and Nursing Programs Included in Titles III, VII and VIII of the Public Health Service Act

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is updating income levels used to identify a ''low income family'' for the purpose of determining eligibility for programs that provide health professions and nursing training for individuals from disadvantaged backgrounds. These various programs are included in Titles III, VII and VIII of the Public Health Service Act.

The Department periodically publishes in the **Federal Register** low-income levels used to determine eligibility for grants and cooperative agreements to institutions providing training for (1) disadvantaged individuals, (2) individuals from disadvantaged backgrounds, or (3) individuals from ''low-income'' families.

SUPPLEMENTARY INFORMATION: The various health professions and nursing grant and cooperative agreement programs that use the low-income levels to determine whether an individual is from an economically disadvantaged background in making eligibility and funding determinations generally make awards to: accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health podiatric medicine, nursing, chiropractic, public or private nonprofit schools which offer graduate programs in behavioral health and mental health practice, and other public or private nonprofit health or education entities to assist the disadvantaged to enter and graduate from health professions and nursing schools. Some programs provide for the repayment of health professions or nursing education loans for disadvantaged students.

Low-Income Levels

The Secretary defines a ''low-income family/household'' for programs included in Titles III, VII and VIII of the Public Health Service Act as having an annual income that does not exceed 200 percent of the Department's poverty guidelines. A family is a group of two or more individuals related by birth, marriage, or adoption who live together. A ''household'' may be only one person. Most HRSA programs use the income of the student's parents to compute low income status. Other programs, depending upon the legislative intent of the program, the programmatic purpose related to income level, as well as the age and circumstances of the participant, will apply these low income standards to the individual student to determine eligibility, as long as he or she is not listed as a dependent on his or her parents' tax form. Each program will announce the rationale and choice of methodology for determining low income levels in their program guidance. The Department's poverty guidelines are based on poverty thresholds published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index.

The Secretary annually adjusts the low-income levels based on the Department's poverty guidelines and makes them available to persons responsible for administering the applicable programs. The income figures below have been updated to reflect increases in the Consumer Price Index through December 31, 2011.

2012 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Size of parents' family*	Income level**
1	$22,340
2	30,260
3	38,180
4	46,100
5	54,020
6	61,940
7	69,860
8	77,780

For families with more than 8 persons, add $7,920 for each additional person.

2012 POVERTY GUIDELINES FOR ALASKA

Size of parents' family*	Income level**
1	$27,940
2	37,840
3	47,740
4	57,640
5	67,540
6	77,440
7	87,340
8	97,240

For families with more than 8 persons, add $9,900 for each additional person.

2012 POVERTY GUIDELINES FOR HAWAII

Size of parents' family*	Income level**
1	$25,720
2	34,820
3	43,920
4	53,020
5	62,120
6	71,220
7	80,320
8	89,420

For families with more than 8 persons, add $9,100 for each additional person.

* Includes only dependents listed on Federal income tax forms. Some programs will use the student's family rather than his or her parents' family.

** Adjusted gross income for calendar year 2011.

Separate poverty guidelines figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. (Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii.) The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. Puerto Rico or other outlying jurisdictions shall use income guidelines for the 48 Contiguous States and the District of Columbia.

Dated: April 10, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–9137 Filed 4–16–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Secretary's Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, codified at 5 U.S.C. App. 2), notice is hereby given of the following meeting:

Name: Secretary's Advisory Committee on Heritable Disorders in Newborns and Children.

Dates and Times:
May 17, 2012, 8:30 a.m. to 5 p.m.
May 18, 2012, 8:30 a.m. to 2:30 p.m.

Place: Hilton Alexandria Old Town Hotel, 1767 King Street, Alexandria, VA 22314.

Status: The meeting will be open to the public, but seating will be limited by the space available. Participants are asked to register for the meeting by going to the registration Web site at *http://altarum.cvent.com/sachdncmay2012.* The registration deadline is Tuesday, May 15, 2012. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate their needs on the registration Web site. The deadline for special accommodation requests is Friday, May 11, 2012. If there are technical problems gaining access to the registration Web site, please contact Maureen Ball, Meetings Coordinator, at *conferences@altarum.org.*

Purpose: The Secretary's Advisory Committee on Heritable Disorders in Newborns and Children (the Advisory Committee), as authorized by Public Law 106–310, which added section 1111 of the Public Health Service Act, codified at 42 U.S.C. 300b–10, was established by Congress to advise the Secretary of the Department of Health and Human Services in connection with the development of newborn screening activities, technologies, policies, guidelines and programs for effectively reducing morbidity and mortality in newborns and children having (or at risk for) heritable disorders. The Advisory Committee's recommendations regarding additional conditions/inherited disorders for screening that are adopted by the Secretary are included in the Recommended Uniform Screening Panel (RUSP), which forms a part of the comprehensive guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans are required to cover screenings provided for in the comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (in the individual market these are known as policy years) beginning on or after the date that is one year from the Secretary's adoption of the screening. The Advisory Committee also provides advice and recommendations concerning grants and projects authorized under section 1109 of the Public Health Service Act (42 U.S.C. 300b–8).

Agenda: The meeting will include: (1) Updates on the policies and procedures of the Advisory Committee; (2) presentation on the newborn screening case definitions project; (3) discussion and prioritization of plans and projects for the standing subcommittees; (4) updates from the Nomination and Prioritization Workgroup and the Condition Review Workgroup; (5) reports on medical foods, medical home and carrier screening; and (6) presentations on the continued work and reports of the Advisory Committee's subcommittees: Laboratory Standards and Procedures; Follow-up and Treatment; and Education and Training. Tentatively, the Advisory Committee is expected to review and/or vote on the following items (none of which involve proposed addition of conditions to the RUSP): (1) Priorities for the subcommittees; (2) whether to refer the MPS I condition nomination package and the Pompe condition nomination package to the Condition Review Workgroup for further evaluation; (3) Condition Review Process Report; (3) Medical Home Manuscript; (4) Medical Foods Manuscript; and (5) NBS Awareness Campaign Strategy Report.

Proposed agenda items are subject to change as priorities dictate. The agenda, Committee Roster and Charter, presentations, and meeting materials can be found at the homepage of the Advisory Committee's Web site at *http://www.hrsa.gov/heritabledisorderscommittee/.*

Public Comments: Members of the public can submit written comments and/or present oral comments during the public comment periods of the meeting. All comments, whether oral or written, are part of the official Committee record and will be available for public inspection and copying. All written and oral comments should contain the name, address, telephone number, and professional or business affiliation of the author. Those individuals who want to make oral comments must note this as part of the online registration process by 5 p.m. EDT, Tuesday, May 15, 2012 at *http://altarum.cvent.com/sachdncmay2012.* Pre-registration is required in order to present oral comments. Presentations will be limited to five to ten minutes depending on the number of presenters. Oral comments will be heard on May 17, 2012. Individuals who are associated with groups having similar interests are requested to combine their comments and present them through a single representative. To ensure that all pre-registered individuals who wish to make oral comments have the opportunity to share their comments, no audiovisual presentations are permitted. Written comments should be sent or emailed by Tuesday, May 15, 2012 to Maureen Ball (*conferences@altarum.org*), Meetings Coordinator, Conference and Meetings Management, Altarum Institute, 1200 18th Street NW., Suite 700, Washington, DC 20036. Comments may also be faxed (202–785–3083). If you have additional questions regarding the submission of comments, please contact Ms. Ball at 202–828–5100.

Contact Person: Anyone interested in obtaining other relevant information should contact or write to Debi Sarkar, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301–443–1080; email: *dsarkar@hrsa.gov.* More information on the Advisory Committee is available at *http://mchb.hrsa.gov/heritabledisorderscommittee.*

Dated: April 10, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–9136 Filed 4–16–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council on Blood Stem Cell Transplantation; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Council on Blood Stem Cell Transplantation.

Date and Times: May 9, 2012, 8 a.m. to 4:30 p.m.

Place: Georgetown University Hotel and Conference Center, 3800 Reservoir Road NW., Washington, DC 20057.

Status: The meeting will be open to the public.

Purpose: Pursuant to Public Law 109–129, 42 U.S.C. 274k (section 379 of the Public Health Service Act, as amended), the Advisory Council on Blood Stem Cell Transplantation (ACBSCT) advises the Secretary of HHS and the Administrator, HRSA, on matters related to the activities of the C.W. Bill Young Cell Transplantation Program (Program) and the National Cord Blood Inventory (NCBI) Program.

Agenda: The Council will hear reports from five ACBSCT Work Groups: (1) Realizing the Potential of Cord Blood, (2) Scientific Factors Necessary to Define a Cord Blood Unit as High Quality, (3) Cord Blood Thawing and Washing, (4) Access to Transplantation, and (5) Advancing Hematopoietic Stem Cell Transplantation for Hemoglobinopathies. The Council also will hear presentations and discussions on topics including: Collection of information on Cellular Therapies; Adverse Event Reporting; and Unmet Need. Agenda items are subject to change as priorities dictate.

After the presentations and Council discussions, members of the public will have an opportunity to provide comments. Because of the Council's full agenda and the timeframe in which to cover the agenda topics, public comments will be limited. All public comments will be included in the record of the ACBSCT meeting. Meeting

summary notes will be made available on HRSA's Program Web site at *http://bloodcell.transplant.hrsa.gov/ABOUT/Advisory_Council/index.html.*

Those planning to attend are requested to register in advance and those wishing to make oral comments should so indicate. The draft meeting agenda and a registration form will be available on HRSA's Program Web site at *http://bloodcell.transplant.hrsa.gov/ABOUT/Advisory_Council/index.html.*

Registration also can be completed electronically at *https://www.acbsct.com* or by sending an email to Tristan Alexander Hicks at *TAlexander@luxcg.com.* Individuals without access to the Internet who wish to register may call Tristan Alexander Hicks at (301) 585–1261 or submit a facsimile to Lux Consulting Group, Inc., the logistical support contractor for the meeting, at fax number (301) 585–7741, Attn: Tristan Alexander Hicks.

FOR FURTHER INFORMATION CONTACT: Patricia Stroup, Executive Secretary, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857; telephone (301) 443–1127.

Dated: April 10, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–9135 Filed 4–16–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Non-Competitive Program Expansion Supplement To Revise, Update, and Disseminate Educational Curricula Regarding Alzheimer's Disease and Related Dementias

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of a Non-Competitive Program Expansion Supplement To Revise, Update, and Disseminate Educational Curricula Regarding Alzheimer's Disease and Related Dementias.

SUMMARY: The Health Resources and Services Administration (HRSA) will be issuing a non-competitive program expansion supplement to 45 Geriatric Education Centers (GEC) Program grantees to revise, update, and disseminate educational curricula regarding Alzheimer's Disease and related dementias (AD). Approximately $2,000,000 will be available in Fiscal Year (FY) 2012 and $4,000,000 in FY 2013 from the Prevention and Public Health Fund, created by the Affordable Care Act. The GEC grantees have the capacity, capability, expertise, experience, and infrastructure to expeditiously, effectively, and efficiently implement the AD initiative within their existing educational programming. The programmatic supplements will allow the Bureau of Health Professions to consolidate resources and provide enhanced technical assistance, grant funds, grant monitoring and oversight to the AD initiative within currently existing grants.

SUPPLEMENTARY INFORMATION:

Grantees of record and intended award amounts are:

Grantee name	Grant No.	State	2012 Projected awards	2012 Supplement amount
University of Alabama at Birmingham	UB4HP19045	Alabama	$216,000.00	$42,222
Arizona Board of Regents	UB4HP19047	Arizona	399,771.00	42,222
University of Arkansas	UB4HP19048	Arkansas	421,310.00	42,222
Board of Trustees of the Leland Stanford Junior University.	UB4HP19049	California	399,772.00	42,222
The Regents of the University of California, Los Angeles	UB4HP19202	California	426,192.00	42,222
The Regents of the University of California, San Francisco.	UB4HP19046	California	424,203.00	42,222
NOVA Southeastern University	UB4HP19211	Florida	431,907.00	42,222
University of Miami	UB4HP19066	Florida	427,185.00	42,222
Emory University	UB4HP19215	Georgia	419,472.00	42,222
University of Hawaii	UB4HP19065	Hawaii	427,920.00	42,222
University of Iowa	UB4HP19054	Iowa	426,650.00	42,222
University of Kansas Medical Center Research Institute	UB4HP19192	Kansas	429,472.00	42,222
University of Kentucky Research Foundation	UB4HP19051	Kentucky	409,280.00	42,222
University of New England	UB4HP19207	Maine	216,000.00	42,222
Johns Hopkins University	UB4HP19193	Maryland	426,800.00	42,222
Regents of the University of Minnesota	UB4HP19196	Minnesota	424,811.00	42,222
Saint Louis University	UB4HP19060	Missouri	427,879.00	42,222
The University of Montana	UB4HP19056	Montana	429,725.00	42,222
Board of Regents, NSHE, on behalf of University of Nevada—Reno.	UB4HP19205	Nevada	418,751.00	42,222
Trustees of Dartmouth College	UB4HP19206	New Hampshire	425,443.00	42,222
UMDNJ—School of Osteopathic Medicine	UB4HP19059	New Jersey	423,459.00	42,222
Mount Sinai School of Medicine	UB4HP19194	New York	421,698.00	42,222
University of Rochester	UB4HP19204	New York	415,498.00	42,222
Duke University	UB4HP19203	North Carolina	215,713.00	42,222
University of North Carolina at Chapel Hill	UB4HP19053	North Carolina	420,000.00	42,222
University of Oklahoma Health Sciences Center	UB4HP19197	Oklahoma	416,609.00	42,222
Oregon Health and Science University	UB4HP19057	Oregon	418,002.00	42,222
Thomas Jefferson University	UB4HP19061	Pennsylvania	417,200.00	42,222
University of Pennsylvania	UB4HP19214	Pennsylvania	427,795.00	42,222
University of Pittsburgh	UB4HP19199	Pennsylvania	416,712.00	42,222
University of Rhode Island	UB4HP19208	Rhode Island	424,589.00	42,222
University of South Carolina	UB4HP19212	South Carolina	422,640.00	42,222
Meharry Medical College	UB4HP19055	Tennessee	418,222.00	42,222
Baylor College of Medicine	UB4HP19052	Texas	414,000.00	42,222
Texas Tech University Health Sciences Center	UB4HP19201	Texas	215,216.00	42,222

Grantee name	Grant No.	State	2012 Projected awards	2012 Supplement amount
The University of Texas Health Science Center at Houston.	UB4HP19058	Texas	216,000.00	42,222
The University of Texas Health Science Center at San Antonio.	UB4HP19063	Texas	420,800.00	42,222
The University of Texas Medical Branch at Galveston	UB4HP19213	Texas	432,000.00	42,222
Virginia Commonwealth University	UB4HP19210	Virginia	421,601.00	42,222
University of Washington	UB4HP19195	Washington	216,000.00	42,222
George Washington University	UB4HP19200	Washington, DC	420,738.00	42,222
West Virginia University Research Corp	UB4HP19050	West Virginia	428,800.00	42,222
Marquette University	UB4HP19062	Wisconsin	412,012.00	42,222
University of Wyoming	UB4HP19198	Wyoming	426,751.00	42,222
Total			17,734,743.00	1,899,990

Intended Recipients of the Award: 45 Existing GEC awardees.

Amount of the Awards: $42,222.

Project Period: July 1, 2012 through June 30, 2014.

Authority: Section 753(a) of the Public Health Service Act, as amended by Section 5305 of the Affordable Care Act.

Justification

The programmatic supplements will allow the Bureau of Health Professions to consolidate resources and provide enhanced technical assistance, grant funds, grant monitoring and oversight to the AD initiative within currently existing grants. Providing the additional funding to existing grantees also has benefits for program evaluative purposes since the GEC grantees already have evaluation requirements with which they comply. This programmatic supplement aligns with the current GEC budget period cycle, resulting in administrative savings over a competitive grant making process.

FOR FURTHER INFORMATION CONTACT: Joan Weiss, Ph.D., RN, CRNP, Health Resources and Services Administration, Division of Public Health and Interdisciplinary Education, 5600 Fishers Lane, Room 9C–05, Rockville, Maryland 20857, or email *jweiss@hrsa.gov*.

Dated: April 11, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–9231 Filed 4–16–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Initial Review Group Neuroscience Review Subcommittee.

Date: June 13, 2012.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Beata Buzas, Ph.D. Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, RM 2081, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: April 10, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9217 Filed 4–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 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 Institute of Environmental Health Sciences Special Emphasis Panel Loan Repayment.

Date: May 11, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Keystone Bulding, 530 Davis Drive, 3094, Research Triangle, NC 27709, (Virtual Meeting).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Evaluation of Novel Biomonitoring Technologies.

Date: May 17, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Raleigh-Durham Airport at RTP, 4810 Page Creek, Durham, NC 27709.

Contact Person: Sally Eckert-Tilotta, Ph.D., Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9229 Filed 4–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Initial Review Group Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: July 17, 2012.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katrina L Foster, Ph.D., Scientific Review Administrator, National Institutes on Alcohol Abuse & Alcoholism National Institutes of Health, 5635 Fishers Lane, RM. 3037, Rockville, MD 20852, 301–443–3037, *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: April 10, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9208 Filed 4–16–12; 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 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: Center for Scientific Review Special Emphasis Panel, Member Conflict: Metabolic Disease.

Date: May 4, 2012.

Time: 2 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: Krish Krishnan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@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: April 10, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9118 Filed 4–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism, Initial Review Group Clinical, Treatment and Health Services Research Review Subcommittee.

Date: July 10, 2012.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katrina L Foster, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, RM. 2019, Rockville, MD 20852, 301–443–4032 *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: April 10, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9213 Filed 4–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee.

Date: June 12, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Philippe Marmillot, Ph.D. Scientific Review Officer National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, RM 2019, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: April 10, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9232 Filed 4–16–12; 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 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: Center for Scientific Review Special Emphasis Panel; RFA Panel: Single Cell Analysis Reviews.

Date: May 8, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@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: April 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9224 Filed 4–16–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Passenger List/Crew List

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Passenger List/Crew List (CBP Form I–418). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 2561) on January 18, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before May 17, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Passenger List/Crew List.

OMB Number: 1651–0103.

Form Number: CBP Form I–418.

Abstract: CBP Form I–418 is prescribed by the Department of Homeland Security, Customs and Border Protection (CBP), for use by masters, owners, or agents of vessels in complying with Sections 231 and 251 of the Immigration and Nationality Act (INA). This form is filled out upon arrival of any person by commercial vessel at any port within the United States from any place outside the United States. The master or commanding officer of the vessel is responsible for providing CBP officers at the port of arrival with lists or manifests of the persons on board such conveyances. CBP is working to allow for electronic submission of the information on CBP Form I–418. This form is provided for in 8 CFR 251.1, 251.3, and 251.4. A copy of CBP Form I–418 can be found at *http://forms.cbp.gov/pdf/CBP_Form_I418.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to information collected or to CBP Form I–418.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 95,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Hours: 95,000.

Dated: April 10, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–9161 Filed 4–16–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights (Part 133 of the CBP Regulations). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 3488) on January 24, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before May 17, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Regulations Relating to Recordation and Enforcement of Trademark and Copyrights (Part 133 of the CBP Regulations).

OMB Number: 1651–0123.

Form Number: None.

Abstract: In accordance with 19 CFR part 133, trademark and trade name owners and those claiming copyright protection may submit information to CBP to enable CBP officers to identify violating articles at the border. Parties seeking to have merchandise excluded from entry must provide proof to CBP of the validity of the rights they seek to protect. The information collected by CBP is used to identify infringing goods at the border and determine if such goods infringe on intellectual property rights for which federal law provides import protection. Respondents may submit their information to CBP electronically at *https://apps.cbp.gov/e-recordations/,* or they may submit their information on paper in accordance with 19 CFR 133.2 and 133.3 for trademarks, or 19 CFR 133.32 and 133.33 for copyrights.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 4,000.

Dated: April 10, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–9163 Filed 4–16–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Tuna—Tariff-Rate Quota; the Tariff-Rate Quota for Calendar Year 2012 Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS).

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2012.

SUMMARY: Each year, the tariff-rate quota for tuna described in subheading 1604.14.22, HTSUS, is based on the apparent United States consumption of tuna in airtight containers during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2012.

DATES: *Effective Dates:* The 2012 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Headquarters Quota Branch, Textile/Apparel Policy and Programs Division, Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229, (202) 863–6560.

Background

It has been determined that 17,270,370 kilograms of tuna in airtight containers may be entered, or withdrawn from warehouse, for consumption during the Calendar Year 2012, at the rate of 6 percent *ad valorem* under subheading 1604.14.22, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent *ad valorem* under subheading 1604.14.30, HTSUS.

Dated: April 11, 2012.

Allen Gina,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2012–9131 Filed 4–16–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–26]

Submission of Proposed Information Collection to OMB: Certification of Consistency and Nexus Between Activities Proposed by the Applicant With Livability Principles Advanced in Preferred Sustainability Status Communities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The proposed form, an attachment to HUD Federal Financial Assistance applications, requests applicants to obtain a certification from the Designated Point of Contact for designated Preferred Sustainability Status Community using form HUD–2995 which verifies that the applicant has met the above criteria. The form will certify the nexus between the proposed activities of the applicant and the Livability Principles as they are being advanced in the Preferred Sustainability Status Communities. If the applicant is from the agency that holds Point of Contact status in a particular Preferred Sustainability Status Community, it must be certified by the appropriate HUD Regional Administrator in consultation with field staff.

DATES: *Comments Due Date:* May 17, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2535–0121) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Certification of Consistency and Nexus Between Activities Proposed by the Applicant With Livability Principles Advanced in Preferred Sustainability Status Communities

OMB Approval Number: 2535–0121.

Form Numbers: HUD 2995.

Description of the Need for the Information and its Proposed Use: The proposed form, an attachment to HUD Federal Financial Assistance applications, requests applicants to obtain a certification from the Designated Point of Contact for designated Preferred Sustainability Status Community using form HUD–2995 which verifies that the applicant has met the above criteria. The form will certify the nexus between the proposed activities of the applicant and the Livability Principles as they are being advanced in the Preferred Sustainability Status Communities. If the applicant is from the agency that holds Point of Contact status in a particular Preferred Sustainability Status Community, it must be certified by the appropriate HUD Regional Administrator in consultation with field staff.

	Number of respondents	Annual responses	Hours per response	Burden hours
Reporting Burden	11,000	1	0.0166	183

Total Estimated Burden Hours: 183.

Status: Extension without change of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 10, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–9221 Filed 4–16–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–C–22]

Submission of Proposed Information Collection to OMB: Production of Material or Provisions of Testimony by HUD in Response to Demands in Legal Proceedings Among Private Litigants

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. (Correction).

Section 15.203 of HUD's regulations in 24 CFR specify the manner in which demands for documents and testimony from the Department should be made. Providing the information specified in 24 CFR 15.203 allows the Department to more promptly identify documents and testimony which a requestor may be seeking and determine whether the Department will be able to produce such documents and testimony.

DATES: *Comments Due Date:* May 17, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2501–0022) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Production of Material or Provisions of Testimony by HUD in Response to Demands in Legal Proceedings Among Private Litigants.

OMB Approval Number: 2501–0022.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Section 15.203 of HUD's regulations in 24 CFR specify the manner in which demands for documents and testimony from the Department should be made. Providing the information specified in 24 CFR 15.203 allows the Department to more promptly identify documents and testimony which a requestor may be seeking and determine whether the Department will be able to produce such documents and testimony.

	Number of respondents	Annual responses	Hours per response	Burden hours
Reporting burden	106	1	1.5	159

Total Estimated Burden Hours: 159.

Status: Reinstatement with change of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended

Dated: April 10, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–9223 Filed 4–16–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

21st Century Conservation Service Corps Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the Department of the Interior, announce a public meeting of the 21st Century Conservation Service Corps Advisory Committee (Committee).

DATES: *Meeting:* Tuesday, May 1, 2012, from 12 noon to 6 p.m., Wednesday, May 2, 2012, from 8:30 a.m. to 6 p.m., and Thursday, May 3, 2012, from 8:30 a.m. to 12 noon (Mountain Time). *Meeting Participation:* Notify Lisa Young (see **FOR FURTHER INFORMATION CONTACT**) by close of business Friday, April 27, 2012, if requesting to make an oral presentation (limited to 2 minutes per speaker). The meeting will accommodate no more than a total of 45 minutes for all public speakers.

ADDRESSES: The meeting will be held at the Rocky Mountain Arsenal National Wildlife Refuge, Building 129 Assembly Room, 6500 Gateway Road, Commerce City, CO 80022. For specific directions, contact Lisa Young (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Lisa Young, Designated Federal Officer (DFO), 1849 C Street NW., MS 3559, Washington, DC 20240; telephone (202) 208–7586; fax (202) 208–5873; or email *Lisa_Young@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5

U.S.C. App. 2, we announce that the 21st Century Conservation Service Corps Advisory Committee will hold a meeting.

Background

Chartered in November 2011, the Committee is a discretionary advisory committee established under the authority of the Secretary of the Interior. The purpose of the Committee is to provide the Secretary of Interior with recommendations on: (1) Developing a framework for the 21CSC, including program components, structure, and implementation, as well as accountability and performance evaluation criteria to measure success; (2) the development of certification criteria for 21CSC providers and individual certification of 21CSC members; (3) strategies to overcome existing barriers to successful 21CSC program implementation; (4) identifying partnership opportunities with corporations, private businesses or entities, foundations, and non-profit groups, as well as state, local, and tribal governments, to expand support for conservation corps programs, career training and youth employment opportunities; (5) and developing pathways for 21CSC participants for future conservation engagement and natural resource careers.

Background information on the Committee is available at *www.doi.gov/21csc.*

Meeting Agenda

The Committee will convene to consider draft recommendations from the subcommittees; and other Committee business. The public will be able to make comment on Wednesday, May 2, 2012 starting at 5 p.m. The final agenda will be posted on *www.doi.gov/21csc* prior to the meeting.

Public Input

Interested members of the public may present, either orally or through written comments, information for the Committee to consider during the public meeting. Speakers who wish to expand upon their oral statements, or those who had wished to speak, but could not be accommodated during the public comment period, are encouraged to submit their comments in written form to the Committee after the meeting.

Individuals or groups requesting to make comment at the public Committee meeting will be limited to 2 minutes per speaker, with no more than a total of 45 minutes for all speakers. Interested parties should contact Lisa Young, DFO, in writing (preferably via email), by Friday, April 27, 2012. (*See* **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting.

In order to attend this meeting, you must register by close of business Friday, April 27, 2012. The meeting location is open to the public. Space is limited, so all interested in attending should pre-register. Please submit your name, time of arrival, email address and phone number to Lisa Young via email at *Lisa_Young@ios.doi.gov* or by phone at (202) 208–7586.

Dated: April 11, 2012.

Lisa Young,

Designated Federal Officer.

[FR Doc. 2012–9130 Filed 4–16–12; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Royalty Policy Committee (RPC) Notice of Renewal

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of renewal of the Royalty Policy Committee.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the Royalty Policy Committee.

The Royalty Policy Committee provides advice to the Secretary of the Interior on the management of Federal and Indian mineral leases and revenues under the laws governing the Department of the Interior. The Committee will also review and comment on revenue management and other mineral and energy-related policies, and provide a forum to convey views representative of mineral lessees, operators, revenue payors, revenue recipients, governmental agencies, and public interest groups. The Royalty Policy Committee reports to the Secretary of the Interior through the Director of the Office of Natural Resources Revenue.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Conway, Office of Natural Resources Revenue; 1801 Pennsylvania Avenue; Washington, DC 20006; telephone number (202) 254–5554.

Certification

I hereby certify that the renewal of the Royalty Policy Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et. seq.*

Dated: April 2, 2012.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2012–9155 Filed 4–16–12; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation Sessions—Administrative Organizational Assessment Draft Report, Organizational Streamlining of BIA and BIE, and BIE Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Education (BIE) will be adding three tribal consultation sessions to the previously scheduled sessions. The additional sessions will focus on the proposed Memorandum of Understanding (MOU) between the Department of Education (ED) and the Department of the Interior (DOI) to improve American Indian and Alaska Native education. The MOU is authorized by the President's Executive Order on Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities (Executive Order 135092) and section 9204 of the Elementary and Secondary Education Act.

DATES: See the **SUPPLEMENTARY INFORMATION** section of this notice for dates of the tribal consultation sessions. We will consider all comments on the proposed MOU between DOI and ED received by close of business on June 15, 2012.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section of this notice for locations of the tribal consultation sessions. Submit comments by email to: *consultation@bia.gov* or by U.S. mail to: Organizational Streamlining Comments, Office of the Assistant Secretary—Indian Affairs, U.S. Department of the Interior, Mail Stop 4141 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For the proposed MOU between ED and DOI, contact: Brian Drapeaux, Chief of Staff, Bureau of Indian Education, DOI (202) 208–6123; or Don Yu, Special Advisor to the Secretary, Office of the Secretary, ED (202) 453–6600. For the Administrative Organizational Assessment Draft Report, contact: Paul Tsosie, Chief of Staff, Office of the Assistant Secretary—Indian Affairs, (202) 208–7163. For the BIA

Streamlining, contact: Bryan Rice, Deputy Bureau Director, Office of Trust Services, Bureau of Indian Affairs, (202) 208–7513.

SUPPLEMENTARY INFORMATION: On March 12, 2012, the Office of the Assistant Secretary—Indian Affairs (AS–IA), the Bureau of Indian Affairs (BIA), and BIE announced they are hosting several upcoming tribal consultation sessions (see 77 FR 14561). This notice announces that the DOI–ED MOU will be added to the May 18, 2012, consultation session from 1 to 2:30 p.m. Also, three additional sessions focused on the proposed MOU between ED and DOI will be held as follows:

Date	Location	Local time
Friday, May 18, 2012	Thunder Valley Casino Resort, 1200 Athens Avenue, Lincoln, California 95648, (877) 468–8777, Booking code: ''120516BURE''.	8 a.m.–12 p.m.
Thursday, May 24, 2012	Northern Arizona University, Auditorium, Ashurst Hall, Building #11, 321 McMullen Circle, Flagstaff, Arizona, 86001, Phone: 928–523–4120.	8 a.m.–12 p.m.
Thursday, May 31, 2012	BLN Office Park, Conference Room 3, 2001 Killebrew Drive, Bloomington, Minnesota 55425, Phone: 952–851–5427 (BIE ADD Office).	8 a.m.–12 p.m.
Tuesday, June 5, 2012	Renaissance Inn, 611 Commerce Street, Nashville, Tennessee 37203, Phone: 615–255–8400.	1 p.m.–5 p.m.

A brief description of each of the topics is available at: *http://www.bia.gov/WhoWeAre/AS–IA/Consultation/index.htm* and in the March 12, 2012, **Federal Register** Notice (77 FR 14561).

Dated: April 11, 2012.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–9218 Filed 4–16–12; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC 00900.L16100000.DP0000]

Notice of Public Meeting, Dakotas Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Dakotas Resource Advisory Council (RAC) will meet as indicated below.

DATES: The next regular meeting of the Dakotas RAC will be held on May 9, 2012, in Spearfish, SD. The meeting will start at 8 a.m. and adjourn at approximately 3:30 p.m.

ADDRESSES: When determined, the meeting location will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana 59301, (406) 233–2831, *mark_jacobsen@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–677–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior through the BLM on a variety of planning and management issues associated with public land management in the Dakotas. At these meetings, topics will include: North and South Dakota Field Office manager updates, briefings by council members to the BLM on their respective areas of representation and other issues that the council may raise. All meetings are open to the public and the public may present written comments to the council. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

Dated: April 9, 2012.

M. Elaine Raper,

Dakotas District Manager, Eastern Montana.

[FR Doc. 2012–9207 Filed 4–16–12; 8:45 am]

BILLING CODE 4310–dn–P

DEPARTMENT OF INTERIOR

National Park Service

[NPS–AKR–WRST–0212–9428; 98651C01SZP]

Wilderness Eligibility Reclassifications, Wrangell-St. Elias National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of Wilderness Eligibility Reclassification, Wrangell-St. Elias National Park and Preserve.

SUMMARY: Wrangell-St. Elias National Park and Preserve has completed an analysis per NPS *Management Policies 2006* 6.2.1 for the reclassification of lands currently deemed to be eligible wilderness based on the 1986 eligibility review conducted as part of the park's General Management Plan (GMP). National Park Service (NPS) solicited public comments on the proposed reclassification as part of the Nabesna Off-Road Vehicle Management Plan/Draft Environmental Impact Statement (DEIS) and as a part of the McCarthy Communications Sites Environmental Assessment (EA). The NPS Director approved the wilderness eligibility reclassifications. The reclassification resulted in the following. For the Nabesna District: (1) motorized trail corridors in existence prior to 1986 were classified as ineligible; and (2) a net gain in eligible acres within the analysis area of 16,929 acres. For the McCarthy Road corridor: (1) The reclassification of 667 acres of wilderness eligible lands in the analysis area to ineligible status; and (2) the construction of telecommunication facilities on lands now deemed to be ineligible.

ADDRESSES: Hard copies of the Nabesna Off-Road Vehicle Management Plan/Final Environmental Impact Statement (FEIS) and the McCarthy Communications Sites Environmental

Assessment (EA) are available on the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/WRST.* They can also be obtained at park headquarters (Wrangell-St. Elias National Park and Preserve, Mile 106.8 Richardson Highway, Copper Center, Alaska) or may be requested from Bruce Rogers, Project Manager, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. A detailed description, including maps, of the wilderness eligibility reclassifications can be found in the appendices of these documents.

SUPPLEMENTARY INFORMATION: The wilderness eligibility reclassification addresses inconsistencies between the eligibility criteria and mapping presented in the 1986 GMP:

- Some areas mapped as ineligible meet the criteria for eligibility. For the Nabesna District, the large ineligible area between the Tanada Lake and Copper Lake trails has not been impacted by trail use nor was it in 1986. This area has been reclassified as eligible.
- Some areas mapped as eligible do not meet the criteria for eligibility. In the Nabesna District, trails that were ''improved or regularly used'' or had impacts associated with them in 1986 should be reclassified as ineligible. Along the McCarthy Road corridor, the Gilahina Butte site was incorrectly determined to be eligible in 1986 despite the fact that it was already ''improved or regularly used.''
- ''Federal lands under application'' were listed as ineligible for wilderness in the 1986 GMP. Some lands in this category have been retained in federal ownership and now meet the criteria for eligibility.

For the Nabesna District, the reclassification proposal was described in the Nabesna Off-Road Vehicle Management Plan/Draft Environmental Impact Statement (DEIS) as part of the preferred alternative and again in the FEIS. For the McCarthy Road corridor, the reclassification proposal was included in the McCarthy Communications Sites Environmental Assessment (EA). Public comment was taken into consideration in the approval of these wilderness eligibility reclassifications.

FOR FURTHER INFORMATION CONTACT: Bruce Rogers, Project Manager, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Telephone: 907–822–7276.

Sue E. Masica,

Regional Director, Alaska.

[FR Doc. 2012–9119 Filed 4–16–12; 8:45 am]

BILLING CODE 4312–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting (WebEx/conference call).

SUMMARY: The Glen Canyon Dam Adaptive Management Work Group (AMWG) makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

DATES: The May 10, 2012, AMWG WebEx/conference call will begin at 1 p.m. (EDT), 11 a.m. (MDT), and 10 a.m. (PDT) and concludes three (3) hours later in the respective time zones.

FOR FURTHER INFORMATION CONTACT: Glen Knowles, Bureau of Reclamation, telephone (801) 524–3781; facsimile (801) 524–3858; email at *gknowles@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a Federal advisory committee, the AMWG, a technical work group, a Grand Canyon Monitoring and Research Center, and independent review panels. The technical work group is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Agenda: The primary purpose of the conference call will be for the AMWG to review the Glen Canyon Dam Adaptive Management Draft Budget for Fiscal Years 2013–14. To participate in the webex/conference call, please use the following instructions:

1. Go to: *https://doilearn.webex.com/doilearn/j.php?J=687892942&PW=NYWFjMDBmYzUw.*

2. If requested, enter your name and email address.

3. If a password is required, enter the meeting password: GCD

4. Click ''Join.''

5. Follow the instructions that appear on your screen.

Audio Conference Information

Phone Number: 1–877–932–7704.

Passcode: 8410783.

Meeting Number: 687 892 942.

Meeting Password: GCD.

There will be limited ports available, so if you wish to participate, please contact Linda Whetton at 801–524–3880 to register.

To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's Web site at: *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/12may10/index.html.* Time will be allowed for any individual or organization wishing to make formal oral comments on the call. To allow for full consideration of information by the AMWG members, written notice must be provided to Glen Knowles, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone 801–524–3781; facsimile 801–524–3858; email at *gknowles@usbr.gov* at least five (5) days prior to the call. Any written comments received will be provided to the AMWG members.

Public Disclosure of Comments

Before including your name, 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: March 29, 2012.

Glen Knowles,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 2012–9220 Filed 4–16–12; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–754]

Certain Handbags, Luggage, Accessories, and Packaging Thereof; Determination Not To Review an Initial Determination Granting Complainant's Motion for Summary Determination

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 the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 16) granting complainant's motion for summary determination of violation of Section 337 in the above captioned investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 5, 2011, based on a complaint filed by Louis Vuitton Malletier S.A. of Paris, France and Louis Vuitton U.S. Manufacturing, Inc., San Dimas, California (collectively ''Louis Vuitton''), as amended on December 10, 2010, alleging violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain handbags, luggage, accessories, and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 297,594; 1,643,625; 1,653,663; 1,875,198 (''the '198 mark''); 2,773,107; 2,177,828; 2,181,753; and 1,519,828. 76 FR 585–6 (Jan. 5, 2011). Louis Vuitton later withdrew its allegations as to its '198 mark in the Second Amended Complaint filed March 24, 2011. *See* 76 FR 24522 (May 2, 2011). The complaint further alleges the existence of a domestic industry.

The Commission's Notice of Investigation named as respondents T&T Handbag Industrial Co., Ltd. of Guangzhou, China Sanjiu Leather Co., Ltd. of Guangzhou, China; Meada Corporation (d/b/a/Diophy Internation) of El Monte, California; Pacpro, Inc. of El Monte, California; Jianyong Zheng (a/k/a/Jui Go Zheng, Jiu An Zheng, Jian Yong Zheng, Peter Zheng) of Arcadia, California; Alice Bei Wang (a/k/a Alice B. Wang) of Arcadia, California; Trendy Creations, Inc. of Chatsworth, California; The Inspired Bagger of Dallas, Texas; House of Bags of Los Angeles, California; Ronett Trading, Inc. (d/b/a/Ronett Wholesale & Import) of New York, New York; EZ Shine Group, Inc. of New York, New York; Master of Handbags of Los Angeles, California; Choicehandbags.com, Inc. (d/b/a/Choice Handbags) of Los Angeles, California; and Rasul Enterprises, LLC (d/b/a/The Handbag Warehouse) of Dallas, Texas. On April 27, 2011, the Commission determined not to review an ID amending the Notice of Investigation: (1) To add Jiu An Zheng and Jiu Gao Zheng in place of Jianyong Zhen; (2) to add Rimen Leather Co., Ltd, Guangzhou Rimen Leather Goods Company Limited, and Guangzhou Rui Ma Leatherware Co., Ltd. in place of Sanjiu Leather Co., Ltd; and (3) to add Monhill, Inc. and Zhixian Lu as respondents. 76 FR 24522 (May 2, 2011). The Commission eventually found all of the respondents in default or terminated them from the investigation based on settlement and consent orders. *See* Notice (Aug. 17, 2011) (Order No. 11); Notice (Aug. 26, 2011) (Order No. 12); Notice (Nov. 2, 2011) (Order No. 14) (unreviewed in relevant part).

On June 28, 2011, the Commission determined not to review an ID (Order No. 7) granting Louis Vuitton's motion for summary determination that it has satisfied the domestic industry requirement. Notice (June 28, 2011).

On August 17, 2011, Louis Vuitton filed a motion pursuant to section 210.18 of the Commission Rules of Practice and Procedure (19 CFR 210.18) for summary determination of violation of section 337 and requesting issuance of a general exclusion order. On August 30, 2011, the Commission investigative attorney filed a response supporting the motion.

On March 5, 2012, the ALJ issued the subject ID granting Louis Vuitton's motion for summary determination of violation of section 337. No petitions for review of the ID were filed. The ID also contained the ALJ's recommended determination of remedy and bonding. Specifically, the ALJ recommended issuance of a general exclusion order. The ALJ further recommended that the Commission set a bond of 100 percent during the period of Presidential review.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles

would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on April 26, 2012. Reply submissions must be filed no later than the close of business on May 3, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 CFR 210.4(f) which requires electronic filing. The original document and eight (8) true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Issued: April 12, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–9175 Filed 4–16–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–837]

Certain Audiovisual Components and Products Containing the Same; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 12, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of LSI Corporation of Milpitas, California and Agere Systems Inc. of Allentown, Pennsylvania. Supplements to the Complaint were received on March 21, 26, and 28, 2012. An amended complaint was filed on March 28, 2012. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audiovisual components and products containing the same by reason of infringement of certain claims of U.S. Patent No. 5,870,087 (''the '087 patent''); U.S. Patent No. 6,452,958 (''the '958 patent''); U.S. Patent No. 6,707,867 (''the '867 patent''); and U.S. Patent No. 6,982,663 (''the '663 patent''). The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 11, 2012, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain audiovisual components and products containing the same that infringe one or more of claims 1, 5, 7–11, and 16 of the '087 patent; claims 1–7, 10, 11, 22–26, 29, 30, 32, 35, and 36 of the '958 patent; claims 1, 4–7, 9–21, 23, 24, 26–40, 44, 45, 47, and 49–74 of the '867 patent; and claims 1–11 of the '663 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

LSI Corporation, 1621 Barber Lane, Milpitas, CA 95305.

Agere Systems Inc., 1110 American Parkway NE., Allentown, PA 18109.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Funai Electric Company, Ltd., 7–7–1 Nakagaito, Daito City, Osaka 574–0013, Japan.

Funai Corporation, Inc., 201 Route 17 North, Rutherford, NJ 07070.

P&F USA, Inc., 3015 Windward Plaza, Windward Fairways II—Suite 100, Alpharetta, GA 30005.

Funai Service Corporation, 2200 Spiegel Drive, Groveport, OH 43125.
MediaTek Inc., No. 1 Dusing Road 1, Hsinchu Science Park, Hsinchu City, Taiwan 30078.
MediaTek USA Inc., 2860 Junction Avenue, San Jose, CA 95134.
MediaTek Wireless, Inc. (USA), 120 Presidential Way, Woburn, MA 01801.
Ralink Technology Corporation, 5 Tai-Yuen 1st Street, 5F, Jhubei City, Hsinchu County, Taiwan 30265.
Ralink Technology Corporation (USA), 20833 Stevens Creek Boulevard, Suite 200, Cupertino, CA 95014.
Realtek Semiconductor Corporation, 2 Innovation Road II, Hsinchu Science Park, Hsinchu 300, Taiwan.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

(4) The Office of Unfair Import Investigation will not participate as a party in this investigation.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By Order of the Commission.

Issued: April 11, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–9174 Filed 4–16–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–011]

Sunshine Act Meeting; Correction

AGENCY HOLDING THE MEETING: United States International Trade Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 77 FR 22344.

ORIGINALLY PUBLISHED TIME AND DATE: April 17, 2012 at 9:30 a.m.

CORRECT TIME AND DATE: April 17, 2012 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

ACTION: In accordance with 19 CFR 201.35(d)(1), notification is hereby given that the public meeting of April 17, 2012, is being held at 11 a.m.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.

2. Minutes.

3. Ratification List.

4. Vote in Inv. Nos. 701–TA–477 and 731–TA–1180–1181 (Final) (Bottom Mount Combination Refrigerator-Freezers from Korea and Mexico). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before April 30, 2012.

5. Vote in Inv. Nos. 701–TA–478 and 731–TA–1182 (Final) (Certain Steel Wheels from China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before April 30, 2012.

6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 12, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–9255 Filed 4–13–12; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0062]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Identification of Imported Explosives Materials

ACTION: 30-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) 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. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 24, page 5844 on February 6, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 17, 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 eight digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact William Miller at *eipb@atf.gov* or the DOJ Desk Officer at 202–514–4304.

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.

Summary of Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Identification of Imported Explosives Materials.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The information is necessary to ensure that explosive materials can be effectively traced. All licensed importers are required to identify by marking all explosive materials they import for sale or distribution. The process provides valuable information in explosion and bombing investigations.

(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 15 respondents will spend 1 hour placing marks of identification on imported explosives 3 times annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 45 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, United States Department of Justice.

[FR Doc. 2012–9172 Filed 4–16–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact; Correction

AGENCY: Federal Bureau of Investigation.

ACTION: Notice; Correction.

SUMMARY: The Federal Bureau of Investigation published a document in the **Federal Register** of April 3, 2012, concerning the date and location of the National Crime Prevention and Privacy Compact Council (Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). The document listed the wrong street address.

FOR FURTHER INFORMATION CONTACT: Skeeter J. Murray, (304) 625–3518.

Correction in the **Federal Register** of April 3, 2012, in 77 FR 20051, first column, correct the hotel address line in **ADDRESSES** to read: 300 East Travis.

Dated: April 10, 2012.

Gary S. Barron,

FBI Compact Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2012–9216 Filed 4–16–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Scientific Integrity: Statement of Policy

AGENCY: Office of the Secretary, Labor.

ACTION: Soliciting comments on Department of Labor Draft Policy on Scientific Integrity.

SUMMARY: The United States Department of Labor (DOL) is developing its policy on Scientific Integrity in response to the March 9, 2009, Presidential Memorandum on Scientific Integrity, and the December 17, 2010, Memorandum from the Director of the Office of Science and Technology Policy. DOL is soliciting comments on its draft policy.

FOR FURTHER INFORMATION CONTACT: E. Christi Cunningham, Associate Assistant Secretary for Regulatory Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2312, Washington, DC 20210, *cunningham.christi@dol.gov,* (202) 693–5959; (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: In March of 2009, the President articulated six principles federal agencies should follow to preserve and promote scientific integrity. The President also assigned the Director of the Office of Science and Technology Policy (OSTP) with the creation of guidelines for Federal Agencies to ensure the highest level of integrity in all aspects of the science and technological processes. This Scientific Integrity policy establishes standards for DOL for ensuring accuracy and integrity in all scientific activities informing rulemaking and public policy decisions in accordance with the memoranda from the President and OSTP.

Scientific Integrity of DOL scientific personnel is vital to the public interest and critical to conducting DOL's mission. Scientific activities provide data to inform many of DOL's decision makers regarding the production of leading economic indicators, evaluation of programs funded by DOL, protection of the health and safety of our Nation's workers, and implementation of labor laws that address conditions of employment, benefits and compensation.

Request for Comments: As part of our development of the DOL scientific integrity principles, we are soliciting public comments. Your input is important to us. To facilitate receipt of the information, the Department will create an Internet portal specifically designed to capture your input and suggestions, *http://dolscientificintegrity.ideascale.com/.* This portal will contain a series of questions designed to gather information on how DOL can best meet these requirements. The portal is expected to open to receive comments on April 11, 2012 and accept comments for 30 days. Please provide responses that are supported with specific examples and data, where possible.

DATES: The portal is expected to open to receive comments starting April 11, 2012. Comments would then need to be received before May 11, 2012.

ADDRESSES: You may submit comments through *http://dolscientificintegrity.ideascale.com/.*

All comments will be available for public inspection at *http://dolscientificintegrity.ideascale.com/.*

Questions for the Public: The Department of Labor intends the questions on the portal to represent a starting point for discussion of the scientific integrity principles. The questions are meant to initiate public dialogue, and are not intended to restrict the issues that may be raised or addressed. The questions were developed with the intent to probe a range of areas.

The Department of Labor is issuing this request solely to seek useful information as it develops its policy. While responses to this request do not bind the Department of Labor to any further actions related to the response, all submissions will be made available to the public on *http://dolscientificintegrity.ideascale.com/.*

AUTHORITY: U.S.C. 301, March 9, 2009, Presidential Memorandum on Scientific Integrity, and the December 17, 2010, memorandum from the Director of the Office of Science and Technology Policy.

Dated: April 11, 2012.

William E. Spriggs,

Assistant Secretary for Policy.

[FR Doc. 2012–9198 Filed 4–16–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications for Cooperative Agreements Under the Disability Employment Initiative

AGENCY: Employment and Training Administration, Labor.

Announcement Type: Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY–11–11.

SUMMARY: The Employment and Training Administration (ETA), in coordination with Department of Labor's (DOL's) Office of Disability Employment Policy (ODEP), announces the availability of approximately $20 million for a third round of cooperative agreements to state agencies that administer the Workforce Investment Act (WIA) of 1998. These funds provide an opportunity for states to develop and implement a plan for improving effective and meaningful participation of persons with disabilities in the workforce. DOL is using this funding to make six to ten grant awards designed to: (1) Improve educational, training, and employment opportunities and outcomes of youth and adults with disabilities who are unemployed, underemployed, and/or receiving Social Security disability benefits; and (2) help these individuals with disabilities find a path into the middle class through exemplary and model service delivery by the public workforce system. The DOL will award DEI grants for a three-year period of performance.

The complete SGA and any subsequent SGA amendments, in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is June 1, 2012.

FOR FURTHER INFORMATION CONTACT: Eileen Banks, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3403.

Signed April 10, 2012 in Washington, DC

B. Jai Johnson

Grant Officer, Employment and Training Administration.

[FR Doc. 2012–9060 Filed 4–16–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning the proposed collection: Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act (LS–200, LS–201, LS–203, LS–204, LS–262, LS–267, LS–271, LS–274, and LS–513). A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 18, 2012.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0701, fax (202) 693–1447, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA). LHWCA provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several Acts extend the Longshore Act's coverage to certain other employees. The following regulations have been developed to implement the Act's provisions and to provide clarification in those areas where it was deemed necessary (20 CFR 702.162, 702.174, 702.175, 20 CFR 702.242, 20 CFR 702.285, 702.321, 702.201, and 702.111). In some cases, prior regulations have been updated and changed either to reflect the intent of the amended Act or to correct recognized deficiencies. This information collection is currently approved for use through June 30, 2012.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- 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 submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this

currently approved information collection.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.

OMB Number: 1240–0014.

Agency Number: (LS–200, LS–201, LS–203, LS–204, LS–262, LS–267, LS–271, LS–274, and LS–513)

Affected Public: Individuals or households, Businesses or other for-profit.

Total Respondents: 130,036.

Total Annual Responses: 130,036.

Estimated Total Burden Hours: 44,950.

Estimated Time per Response: 2 minutes to 3 hours.

Frequency: On occasion and annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $45,979.

Burden summary	Hours
LS–200 (20 CFR 702.285)	1,904
20 CFR 702.162 (Liens)	5
20 CFR 702.174 (Certifications)	4
20 CFR 702.175 (Reinstatements)	1
20 CFR 702.242 (Settlement Applications)	9,498
20 CFR 702.321 (Section 8(f) Payments)	1,425
ESA–100 (20 SFR 702.201)	840
LS–271 (Self Insurance Application)	60
LS–274 (Injury Report of Insurance Carrier and Self-Insured Employer)	565
LS–201 (Injury or Death Notice)	910
LS–513 (Payment Report)	283
LS–267 (Claimant's Statement)	37
LS–203 (Employee Comp. Claim)	2,048
LS–204 (Medical Report)	27,300
LS–262 (Claim for Death Benefits)	70
Total Burden Hours	44,950

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 10, 2012.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2012–9102 Filed 4–16–12; 8:45 am]

BILLING CODE 4510–CF–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 9 a.m. to 3 p.m., Friday, April 27, 2012.

PLACE: The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) Program reports; (2) management committee report; (3) Parks in Focus Program report; (4) financial scenarios report; (5) Board procedures and governance.

PORTIONS OPEN TO THE PUBLIC: All agenda items except as noted below.

PORTIONS CLOSED TO THE PUBLIC: Executive session for consultation with legal counsel regarding aspects of the agenda items.

CONTACT PERSON FOR MORE INFORMATION: Ellen K. Wheeler, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: April 10, 2012.

Ellen K. Wheeler,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2012–9029 Filed 4–16–12; 8:45 am]

BILLING CODE 6820–FN–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12-029]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, May 8, 2012, 8:30 a.m. to 5 p.m., and Wednesday, May 9, 2012, 8:30 a.m. to 4 p.m., Local Time.

ADDRESSES: This meeting will take place at NASA Headquarters, 300 E Street SW., Rooms 6H45 and 3H46, respectively, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will also be available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 888–390–1271, pass code PSS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number on May 8th is 991 015 190, password PSS@May8; the meeting number on May 9th is 995 739 151, password PSS@May9. The agenda for the meeting includes the following topics:

—Status of Budgetary and Programmatic Impacts on the Planetary Science Division;

—Status of the Joint NASA-European Space Agency Mars and Outer Planets Programs;

—Status Updates from the Analysis Groups.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Marian Norris via email at *mnorris@nasa.gov* or by fax at (202) 358–4118. U.S. citizens and green card holders are requested to submit their

name and affiliation 3 working days prior to the meeting to Marian Norris.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–9114 Filed 4–16–12; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0090]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or the NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 22, 2012 to April 4, 2012. The last biweekly notice was published on April 3, 2012 (77 FR 20070).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0090. You may submit comments by the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0090. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0090 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0090.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0090 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s)

whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital information (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing

system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, (HBRSEP), Darlington County, South Carolina

Date of amendment request: February 10, 2012.

Description of amendment request: The proposed change revises the Technical Specification (TS) surveillance requirements (SRs) for addressing a missed surveillance. The change is consistent with the NRC-approved Revision 6 of Technical Specification Task Force (TSTF) Standard Technical Specifications (STSs) Change Traveler TSTF–358, ''Missed Surveillance Requirements.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to incorporate the requirements of improved STS SR 3.0.3 into corresponding HBRSEP TS SR 3.0.3, respectively, does not affect the design or operation of the plant. The proposed change involves revising the existing HBRSEP custom TS to be consistent with NUREG–1431, Revision 3, to facilitate the incorporation of TSTF–358 into the TS. The proposed change involves no technical changes to the existing TS as it merely clarifies how SRs are met. As such, these changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to incorporate the requirements of improved STS SR 3.0.3 into corresponding HBRSEP TS SR 3.0.3, respectively, does not involve a physical alteration to the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change revises the existing HBRSEP TS to be consistent with NUREG–1431, Revision 3, to clarify how SRs are met and facilitates the incorporation of TSTF–358 for addressing missed surveillances. As such, the proposed change will not impose any new or different requirements or eliminate any existing requirements.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change to incorporate the requirements of improved STS SR 3.0.3 into corresponding HBRSEP TS SR 3.0.3, respectively, does not affect plant operation or safety analysis assumptions in any way. The change provides additional clarification on how a surveillance is met and facilitates the incorporation of TSTF–358 for addressing missed surveillances. The change is administrative in nature and does not affect the operation of safety-related systems, structures, or components.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Manager—Senior Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Douglas A. Broaddus.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: March 16, 2012.

Description of amendment request: The proposed change would make corrections in the Technical Specification (TS) Table 3.3.1–1 Note 1 for Overtemperature Delta Temperature (OTΔT). The corrections are consistent with NUREG–1431, ''Standard Technical Specification Westinghouse Plants'', Revision 3. The proposed change to TS Table 3.3.1–1 Note 1 corrects the inequality symbol associated with the nominal Reactor Coolant System operating pressure (P'). The P' provided in TS Table 3.3.1–1 Note 1 was incorrectly specified as less than or equal to (≤) 2235 pounds per square inch gage (psig) and is being corrected to greater than or equal to (≥) 2235 psig. In addition, the f(ΔI) penalty factor for axial power distribution values less than −17 percent Rated Thermal Power (RTP) or less than 12 percent RTP is currently specified as ''2.4'' and is being clarified to 2.4%.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is a correction to the equation for OTΔT setpoint and the inputs for f(ΔI) shown in Table 3.3.1–1 Note 1. The OTΔT equation and variables values serve as a model for trip setpoint calculation. The errors in Table 3.3.1–1 being addressed by this proposed change were contained in and introduced during the implementation of NUREG–1431, Improved Standard Technical Specifications, Revision 1. The proposed changes are consistent with NUREG–1431, Revision 3, which has corrected these errors. The OTΔT parameter limits continue to be determined using the NRC methodologies and OTΔT will continue to be within the limit assumed in the accident analysis. As a result, neither the probability nor the consequences of any accident previously evaluated will be affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from the proposed changes. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change will have no effect on the margin of safety. This proposed change is a correction to the OTΔT setpoint calculation and the inputs for f(ΔI).

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Manager—Senior Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Douglas A. Broaddus.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 8, 2011.

Description of amendment request: The proposed amendment would: (1) extend the frequency of Surveillance Requirement (SR) 3.3.8.1.3 (calibration of loss of power instrumentation) from 18 to 24 months, and (2) revise the Allowable Values of certain functions in Table 3.3.8.1–1 of Technical Specification (TS) 3.3.8.1, ''Loss of Power (LOP) Instrumentation.'' The SR extension will make the administration and performance of that SR consistent with the River Bend Station's 24-month operating cycles, as approved by the NRC in Amendment No. 168 dated August 31, 2010. The changes to the Allowable Values are necessary to address the discovery of a non-conservative value in the affected TS 3.3.8.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

SR extension:

The proposed TS change revises a surveillance testing interval to facilitate a change in the operating cycle length. The proposed TS change involves no physical alteration of the plant. The proposed TS change does not degrade the performance of, or increase the challenges to, any safety systems assumed to function in the accident analysis. The proposed TS change does not adversely affect the usefulness of the SR in evaluating the operability of required system and components, or the way in which the surveillance is performed. In addition, the frequency of surveillance testing is not considered an initiator of any analyzed accident, nor does a revision to the frequency introduce any accident initiators. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of a previously evaluated accident are not significantly increased. The proposed change does not affect the performance of any equipment credited to mitigate the radiological consequences of an accident. Evaluation of the proposed TS change has demonstrated that the availability of credited equipment is not significantly affected because of other more frequent testing that is performed, the availability of redundant systems and equipment, and the high reliability of the equipment. Historical review of surveillance test results and associated maintenance records did not find evidence of failures that would invalidate the above conclusions.

AV changes:

The change in the degraded voltage protection voltage and time delay allowable values allows the protection scheme to function as originally designed. (This change will involve alteration of nominal trip setpoints in the field, also to be reflected in revisions to the calibration procedures.) The proposed allowable values ensure that the Class 1 E distribution system remains connected to the offsite power system when adequate offsite voltage is available and motor starting transients are considered.

Calculations have demonstrated that adequate margin is present to support the decrease in the minimum allowable Division 3 degraded voltage. The proposed time delay continues to provide equipment protection while preventing a premature separation from offsite power. The diesel start due to a Loss of Coolant Accident signal is not adversely affected by this change. During an actual degraded voltage condition, the degraded voltage time delays will continue to isolate the Class 1 E distribution system from offsite power before the diesel is ready to assume the emergency loads, which is the limiting time basis for mitigating system responses to the accident. For this reason, the existing loss of power/loss of coolant accident analysis continues to be valid.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

SR extension:

The proposed TS change revises a surveillance testing interval to facilitate a change in the operating cycle length. The proposed TS change does not introduce any failure mechanisms of a different type than those previously evaluated, since there are no physical changes being made to the facility. No new or different equipment is being installed. No installed equipment is being operated in a different manner. As a result, no new failure modes are being introduced. The way surveillance tests are performed remains unchanged. A historical review of surveillance test results and associated maintenance records indicated there was no evidence of any failures that would invalidate the above conclusions.

AV changes:

The proposed change involves the revision of degraded voltage protection voltage and time delay allowable values to satisfy existing design requirements.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

SR extension:

The proposed TS change revises a surveillance testing interval to facilitate a change in the operating cycle length. The effect of this change on system availability is not significant, based on other more frequent testing that is performed, the existence of redundant systems and equipment, and overall system reliability. Evaluation has shown there is no evidence of time dependent failures that would affect the availability of the systems. The proposed change does not adversely affect the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change does not result in any hardware changes or in any changes to the analytical limits assumed in accident analyses. Existing operating margin between plant conditions and actual plant setpoints is not significantly reduced due to these changes. The proposed change does not significantly affect any safety analysis assumptions or results.

AV changes:

The proposed protection voltage allowable values are low enough to prevent inadvertent power supply transfer, but high enough to ensure that sufficient voltage is available to the required equipment. The proposed time delay continues to provide equipment protection while preventing a premature separation from offsite power. The diesel start due to a Loss of Coolant Accident signal is not adversely affected by this change. During an actual degraded voltage condition, the degraded voltage time delays will continue to isolate the Class 1 E distribution system from off site power before the diesel is ready to assume the emergency loads. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Entergy Nuclear Vermont Yankee (VY), LLC and Entergy Nuclear Operations, Inc.,

Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: February 1, 2012.

Description of amendment request: The proposed amendment would revise the Technical Specification 3.3.B.3 allowances for bypassing the Rod Worth Minimizer (RWM) consistent with the allowances recommended in the Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not significantly increase the probability or consequences of an accident. The RWM is credited to minimize the probability and consequences of a control rod drop accident however this amendment proposes to substitute additional administrative requirements that ensure the analysis remains conservative and bounding. The additional requirements are considered adequate so as not to have a significant impact on the probability or consequences of an accident. Individuals performing the additional verification of selected control rods are qualified and use additional process controls to ensure they perform the necessary verifications. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve any new modes of operation. The change established additional administrative controls for when the RWM system is inoperable. The administrative controls involve performing an independent verification that the correct control rod is selected. The proposed amendment does not change how the control rods are moved or change the design configuration of the control rods. No new accident precursors are introduced. No new or different types of equipment will be installed. The methods governing plant operation remain bounded by current safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment establishes additional administrative requirements for when the RWM is inoperable. The additional administrative controls provide reasonable assurance that station safety analysis results are unchanged and existing safety margins are preserved. The amendment ensures that control rod selection remains within established withdrawal sequences and minimizes the probability that a human error will result is an out of sequence rod being moved. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Entergy Nuclear Vermont Yankee (VY), LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: March 12, 2012.

Description of amendment request: The proposed amendment would request to approve revision of License Renewal Commitment (LRC) No. 3 and No. 6 as described in Appendix A of Supplement 2 to NUREG–1907. Specifically, LRC No. 3 would be revised to clarify that cleaning and inspecting of the fire pump diesel storage tank is not required in order to perform ultrasonic thickness (UT) measurements of the tank bottom surface and LRC No. 6 would be revised to use manual cycle counting to track and compare accumulated cycles against allowable values to determine if cumulative usage factors are required to be updated.

The proposed amendment would also approve revision of LRC No. 16 and LRC No. 19, which require, respectively, implementation of the One Time Inspection Program as described License Renewal Application (LRA) Section B.1.21, and implementation of the Selective Leaching Program as described in LRA Section B.1.25. Specifically, the proposed amendment would approve revising the Aging Management Program for Selective Leaching described in LRA Section B.1.25 to provide alternative assessment methods for gray cast iron components and approve revising the One-Time Inspection Program described in LRA Section B.1.21 to remove the reactor vessel flange leak-off line and main stream line flow restrictors from the program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The amendment does not significantly increase the probability of an accident since it does not involve a change to any plant equipment that initiates a plant accident. The change revises license renewal commitments and aging management programs. License renewal commitments and aging management programs are in place to ensure that the effects of aging are properly managed for the systems, structures and components within the scope of the programs during the period of extended operation. The proposed changes are not an initiator or mitigator of any previously evaluated accidents. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since it does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. The change revises license renewal commitments and aging management programs. License renewal commitments and aging management programs are in place to ensure that the effects of aging are properly managed for the systems, structures and components within the scope of the programs during the period of extended operation. No new or different types of equipment will be installed and the basic operation of installed equipment is unchanged. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not affect design codes or design margins. The change revises license renewal commitments and aging management programs. License renewal commitments and aging management programs are in place to ensure that the effects of aging are properly managed for the systems, structures and components within the scope of the programs during the period of extended operation. The proposed changes do not have the ability to affect analyzed safety margins. Therefore, operation of VY in accordance with the proposed amendment will not involve a significant reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 13, 2011, as supplemented by letters dated November 25, 2011, and January 18, 2012.

Description of amendment request: The amendment would modify Technical Specification (TSs) 3/4.7.4 Table 3.7–3, ''Ultimate Heat Sink Minimum Fan Requirements Per Train,'' which indicates the minimum Dry Cooling Tower (DCT) and Wet Cooling Tower (WCT) fan requirements for given meteorological conditions. The amendment would modify the WCT fan requirements by placing a limit on the number of inoperable fans per cell. This change is needed because the current TS requirement was found to be non-conservative. To address non-conservatisms in the TS, Entergy Operations, Inc. (Entergy, the licensee), has implemented administrative controls that limit the number of WCT fans allowed out-of-service per cell. In concert with the above change, the dry bulb temperature limits for the DCT and wet bulb temperature limits for the WCT will also be lowered to accommodate the increased heat load resulting from the Replacement Steam Generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies TS 3/4.7.4 Table 3.7–3 to be consistent with the revised design basis calculation. This change is necessary to preserve the assumptions and limits of the revised UHS [ultimate heat sink] design basis calculation. The calculation determines the maximum number of cooling tower fans allowed out-of-service for a given wet or dry bulb temperature and establishes more restrictive cooling tower fan operating requirements. The proposed change does not directly affect any material condition of the plant that could contribute to an accident or that could contribute to the consequences of an accident. The proposed change ensures that the mitigating effects of the UHS will be consistent with the design basis analysis. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change modifies TS 3/4.7.4 Table 3.7–3 to be consistent with the revised design basis calculation. The revised calculation lowers the dry and wet bulb temperature limits to account for increased heat duty for the Replacement Steam Generators. This change also implements more restrictive WCT minimum fan requirements. The proposed change to Table 3.7–3 does not alter the operation of the plant

or the manner in which the plant is operated such that it created credible new failure mechanisms, malfunctions, or accident initiators.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change modifies TS 3/4.7.4 Table 3.7–3 to be consistent with the revised design basis calculation. More restrictive cooling tower fan operability requirements result from placing lower limits on the wet and dry bulb temperatures in the TS and limits on the number of WCT out-of-service fans per cell. These revised temperatures are based on calculations ECM98–009 and ECl91–029, and an additional allowance to account for minor inaccuracies. The TS Bases 3.4/7.4 indicates that the calculated temperature values associated with the DCT and WCT fan requirements have been rounded in the conservative direction and lowered at least one full degree to account for minor inaccuracies. The proposed change preserves the margin of safety by ensuring that the minimum number of operable fans per cell for a given temperature are capable of removing the heat duty for the UHS. The proposed change does not exceed or alter a design basis or safety limit.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 21, 2011.

Description of amendment request: The amendment would relocate the following Technical Specifications (TSs) to the Waterford Steam Electric Station, Unit 3 (Waterford 3), Technical Requirements Manual: (a) TS 3.4.6, ''Chemistry,'' (b) TS 3.7.5, ''Flood Protection,'' (c) TS 3.7.9, ''Sealed Source Contamination,'' and (d) TS 3.9.5, ''Communications.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed change relocates Technical Specifications (TS) 3.4.6 (Chemistry), TS 3.7.5 (Flood Protection), TS 3.7.9 (Sealed Source Contamination), and TS 3.9.5 (Communications) to the Waterford 3 Technical Requirements Manual (TRM). This is consistent with the requirements of [10 CFR 50.36(c)(2)(ii)] and aligns with NUREG–1432 (Combustion Engineering Standard Technical Specifications).

Each TS relocation was evaluated against the [10 CFR 50.36(c)(2)(ii)] criteria to demonstrate no impact on the design basis accident or probability. Consequently, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS 3.4.6 (Chemistry), TS 3.7.5 (Flood Protection), TS 3.7.9 (Sealed Source Contamination), and TS 3.9.5 (Communications) relocation to the Waterford 3 TRM does not change any of the controls necessary for design basis accident initiation or mitigation. The proposed change is allowable because the evaluation against the [10 CFR 50.36(c)(2)(ii)] criteria shows no impact. This provides assurance that the design basis accidents will remain within their initial assumptions and consequently, there is no possibility of a new or different kind of accident due to this change.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed TS 3.4.6 (Chemistry), TS 3.7.5 (Flood Protection), TS 3.7.9 (Sealed Source Contamination), and TS 3.9.5 (Communications) relocation to the Waterford 3 TRM will not affect protection criterion for plant equipment and will not reduce the margin of safety. The Waterford 3 TRM requires the [10 CFR 50.59] process be entered for any corresponding change, thus maintaining the required margin of safety. Consequently, there is no significant reduction in a margin of safety due to this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: March 19, 2012.

Description of amendment request: The NRC issued Amendment No. 239, Departure from a Method of Evaluation for the Auxiliary Building Overhead Crane (FHCR–5), on December 27, 2011. Amendment No. 239 was approved to be implemented within 180 days of issuance of the amendment. In license amendment request 312, Revision 0, the licensee requested additional time to complete the implementation of Amendment No. 239 from 180 days to, ''Implementation shall be completed 90 days prior to moving a spent fuel shipping cask with FHCR–5.'' The licensee requested extending the implementation period to allow for installation and testing of the new single failure proof FHCR–5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed LAR implementation schedule change request is administrative in nature and does not require any physical plant modifications, physically affect any plant systems or components, or entail changes in plant operation. The spent fuel will remain in the pool and continue to be cooled until the cask operations commence after implementation is complete.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed LAR implementation schedule change request is administrative in nature and does not require any physical plant modifications, physically affect any plant systems or components, or entail changes in plant operation. Maintenance and modification activities near the spent fuel pools are controlled to preclude the possibility of a heavy load drop. No new accident scenarios, failure mechanisms or limiting single failures are introduced as result of the proposed change. The proposed amendment implementation schedule change request has no adverse effects on any safety-related system.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in a margin of safety.

The proposed LAR implementation schedule change request is administrative in nature and does not require any physical plant modifications, physically affect any plant systems or components, or entail changes in plant operation. The proposed amendment implementation schedule change request does not involve a significant reduction in a margin of safety.

Based on the above, FPC [the licensee] concludes that the proposed license amendment request presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c) and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Douglas A. Broaddus.

NextEra Energy Seabrook, LLC Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: May 14, 2010, as supplemented August 24, 2010, September 16, 2011, and March 15, 2012.

Description of amendment request: The license amendment request was originally noticed in the **Federal Register** on July 13, 2010 (75 FR 39979). This notice is being reissued in its entirety to include a revised description of the amendment request. The proposed changes would revise the Seabrook Station Technical Specifications (TSs) governing the Containment Enclosure Emergency Air Cleanup System (CEEACS). The proposed amendment would change TS Surveillance Requirement (SR) 4.6.5.1.d.4 so that it will demonstrate integrity of the containment enclosure building rather than operability of CEEACS. The proposed amendment relocates SR 4.6.5.1.d.4 with modifications to new SR 4.6.5.2.b. Additionally, the proposed amendment makes some minor wording changes, deletes a definition, and removes a moot footnote.

Basis for proposed NSHC determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed change does not impact the physical function of plant structures, systems, or components (SSCs) or the manner in which SSCs perform their design function. The proposed changes neither adversely affect accident initiators or precursors, nor alter design assumptions. The proposed changes do not alter or prevent the ability of operable SSCs to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

This change is a revision to the TSs SRs for the CEEACS, which is a mitigation system designed to prevent uncontrolled releases of radioactivity into the environment. The proposed amendment would change TS SR 4.6.5.1.d.4 so that it will demonstrate integrity of the containment enclosure building rather than operability of CEEACS. The proposed amendment relocates SR 4.6.5.1.d.4 with modifications to new SR 4.6.5.2.b. The CEEACS is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated

The proposed change will not impact the accident analysis. The changes will not alter the requirements of the CEEACS or its function during accident conditions, and no new or different accidents result from the proposed changes to the TSs. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the method of plant operation. The changes do not alter assumptions made in the safety analysis. Therefore, this request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed changes do not involve a significant change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety system settings, and will not relax the bases for any limiting conditions for operation. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design bases. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Meena Khanna.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: January 20, 2012.

Description of amendment request: The licensee proposed to revise the MNGP Technical Specifications (TS), adding a new Section 5.6.5 to specify requirements about the contents of a Pressure and Temperature Limits Report (PTLR), and to replace existing TS requirements regarding reactor vessel heatup and cooldown rate limits and the pressure and temperature (P–T) limit curves referencing the PTLR. The proposed new Section 5.6.5 is consistent with the guidance provided in NRC Generic Letter 96–03, ''Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits.'' These new curves have been developed applying the analytical methodology described in Structural Integrity Associates (SIA) Report SIR–05–044–A, ''Pressure-Temperature Limits Report Methodology for Boiling Water Reactors,'' which has previously received NRC approval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC). The NRC staff reviewed the licensee's NSHC analysis and has prepared its own as follows:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Appendix G of 10 CFR 50 requires licensees to establish limits for the pressure and temperature of the reactor coolant pressure boundary (RCPB) in order to protect against brittle failure. These limits are defined by P–T curves, which, when properly defined and adhered to, will protect the RCPB against brittle failure regardless of where these curves and associated requirements are located. The proposed amendment only affects the location of the P–T limits curves and associated requirements. The proposed amendment will continue to ensure that P–T limits acceptable to the NRC staff are employed at Monticello. There will be no design change associated with the proposed amendment. Thus, there will be no increase in the consequences of previously evaluated accidents. In addition, since previously evaluated accidents were not assumed to be initiated by the approved P–T limits, the proposed amendment, which will require operation within approved P–T limits, will cause no increase in the probability of occurrence of previously evaluated accidents.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not affect the safety function of the P–T limits, or any plant system, structure, or component (SSC) previously evaluated. The proposed amendment does not involve installation of any new SSC, and the existing installed SSC will not be operated in a new or different manner. The relocated P–T limit requirements will continue to protect the RCPB against brittle failures. No setpoints will be changed which would alter the dynamic response of plant equipment. Accordingly, no new failure modes are introduced. The proposed amendment, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment will not alter any previously used safety analysis methods, scenarios, acceptance criteria, or assumptions. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on its own analysis, concludes that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for the licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Shawn A. Williams, Acting.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 23, 2011.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to incorporate a new Radial Peaking Factor definition and to clarify Limiting Condition for Operation 2.10.2(6), ''Shutdown CEA [Control Element Assembly] Insertion Limit During Power Operation.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

[Response: No.]

There are no changes in plant systems, plant control operating procedures or instrument alarm or trip settings associated with this LAR [license amendment request]. Because neither physical equipment nor operating methods for that equipment change, the probability of accident initiation does not change. Therefore, the proposed TS change does not does not involve a significant increase in the probability of an accident previously evaluated.

The Unrodded Integrated Radial Peaking factor (F_R) has been used in past safety analyses and radiological consequence analyses. These analyses utilized the assumption that F_R would remain within the TS limit during plant operations. These analyses verify, for anticipated operational occurrences (AOO) and postulated accidents (PA), that:

1. The departure from nucleate boiling ratio (DNBR) remains above the appropriate TS Safety Limit, and

2. The calculated offsite doses and control room dose for the affected events remain within the guidelines of 10 CFR 50.67, 10 CFR 100, and 10 CFR 50, Appendix A, General Design Criteria (GDC) 19, ''Control room.''

All current safety analysis calculations are performed using the Maximum Radial Peaking Factor (FR^T) limit (which remains unchanged), without exceeding the specified Safety Limits. The radiological consequence events have used the FR^T limit to determine the source strength.

Because the results of the transient analyses meet the Safety Limits, and because the dose consequences of all analyzed events are within the guidelines of 10 CFR 50.67, 10 CFR 100, and GDC 19, the proposed LAR does not involve a significant increase in the consequences of an accident previously evaluated.

The remaining changes are administrative or editorial in nature. Therefore, operation of the plant in accordance with the proposed TS does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

[Response: No.]

Operation of the plant in accordance with the proposed TS does not add any new equipment, settings, or alter any plant operating practices. The Unrodded Integrated Radial Peaking Factor (F_R) is a peaking factor no longer used in core design or safety analyses. The definition of ''Maximum Radial Peaking Factor'' (FR^T) is incorporated into the TS and current requirements for, and references to FR^T, are revised accordingly to reflect modern day incore monitoring systems. The remaining changes are administrative or editorial in nature. Since there are no changes in operating plant equipment, settings, or normal operating practices, operation in accordance with the proposed TS does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

[Response: No.]

The disposition of the [Updated Final Safety Analysis] Chapter 14 events, the setpoint verification, the fuel centerline melt (FCM) and the minimum DNBR analyses will continue to use the Maximum Radial Peaking Factor in accordance with approved methods. A detailed XCOBRA–IIIC model, which incorporates the limiting radial and axial power distributions, is applied to pre-trip departure from nucleate boiling (DNB) event analyses to determine the minimum DNBR values for limiting AOOs and PAs with the high thermal performance (HTP) DNB correlation. A post-trip event (Main Steam Line Break) has all CEAs inserted except for the most reactive CEA, and therefore has different radial and axial power distributions to which the Core Operating Limits Report (COLR) FR^T limit does not apply. The calculated results for the limiting events meet the Safety Limits specified in the TS. A simplified XCOBRA–IIIC model is used in the verification of the plant protection system setpoints.

Therefore, operation of the plant in accordance with the proposed TS does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc. Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: February 14, 2012, and revised on March 12, 2012.

Description of amendment request: The proposed changes would amend Combined License Nos. NPF–91 and NPF–92 for Vogtle Electric Generating Plant (VEGP) Units 3 and 4, respectively, in regard to the structural module stud size and spacing by increasing the carbon steel vertical stud spacing, decreasing the stainless steel stud diameter, and decreasing the stainless steel vertical and horizontal stud spacing in accordance with the design basis. The departure from Tier 2* information involves changes to Sheet 1 of plant-specific Design Control Document Figure 3.8.3–8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The design function of the containment modules is to support the reactor coolant system components and related piping systems and equipment. The design functions of the affected structural module in the auxiliary building are to provide support and protection for new and spent fuel and the equipment needed to support fuel handling, cooling, and storage in the spent fuel racks, and to provide support, protection, and separation for the seismic Category I mechanical and electrical equipment located outside the containment building. The design function of the shear studs is to transfer loads into the concrete of the structural modules. The proposed change corrects a drawing note regarding shear stud size and spacing for structural wall modules to be consistent with the underlying design basis calculations, which are more conservative. The thickness, geometry, and strength of the structures are not adversely altered. The properties of the concrete included in the modules are not altered. As a result, the design function of the structural modules is not adversely affected by the proposed change. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to normal operation or postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor does the change described create any new accident precursors. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change corrects a drawing note regarding shear stud size and spacing for structural wall modules to be consistent with the underlying design basis calculations. Stud spacing and sizing are updated such that stud loadings are within acceptable limits and that the structural module acts in a composite manner. The thickness, geometry, and strength of the structures are not adversely altered. The material and thickness of the steel plates are not altered. The properties of the concrete included in the modules are not altered. The change to the internal design of the structural modules does not create any new accident precursors. As a result, the design function of the modules is not adversely affected by the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No

The criteria and requirements of the [American Institute of Steel Construction (AISC) Code] AISC–N690 provide a margin of safety to structural failure. The design of the shear studs for the structural wall modules conforms to criteria and requirements in AISC–N690 and therefore maintains the margin of safety. The proposed change corrects a drawing note regarding shear stud size and spacing for the structural wall modules so as to be consistent with the underlying design basis calculations. There was no change to the method of evaluation from that used in the design basis calculations. Therefore, the proposed change will not result in a significant reduction in a margin of safety in the design and analysis of the structural modules, including the containment internal structures and module CA20 in the auxiliary building.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Mark E. Tonacci.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant Unit No. 2, Darlington County, South Carolina

Date of application for amendment: January 20, 2011, as supplemented by letter dated February 23, 2012.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil and Starting Air,'' Condition D, changing the emergency diesel generator starting air receiver low air pressure limit from 100 pounds per square inch gauge (psig) to 150 psig, and corrects an editorial error related to the numbering format in TS 3.8.5, ''DC Sources—Shutdown,'' Limiting Condition for Operation (LCO) Condition A, Required Action, from A.1.1 to A.1.

Date of issuance: March 30, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 228.

Renewed Facility Operating License No. DPR–23. The amendment revised the TSs and the Facility Operating License.

Date of initial notice in ***Federal Register***: April 19, 2011 (76 FR 21922). The February 23, 2012, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 2012.

No significant hazards consideration comments received: No.

Carolina Power and Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power

Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: January 13, 2011, as supplemented by letters dated October 6, 2011, February 24, and March 20, 2012.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.3.1 ''Fuel Assemblies'' to change the description of fuel assemblies and added the AREVA NP Inc. Topical Report BAW–10240(P)–A, ''Incorporation of M5™ Properties in Framatome ANP Approved Methods,'' to the analytical methods referenced in TS 6.9.1.6. ''Core Operating Limits Report.'' The amendment also deletes existing analytical methodologies that are no longer planned to be used by the licensee in TS 6.9.1.6.2 to allow the use of M5™ alloy for fuel rod cladding in future operating cycles.

Date of issuance: March 30, 2012.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No. 137.

Renewed Facility Operating License No. NPF–63. Amendment revised the TSs.

Date of initial notice in ***Federal Register***: April 19, 2011 (76 FR 21922). The October 6, 2011, February 24, and March 20, 2012, supplements provided additional information that clarified the application, did not expand the scope of the application as originally noticed and did not change the NRC staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated March 30, 2012.

No significant hazards consideration comments received: No.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: May 9, 2011, as supplemented by letters dated June 30, and October 31, 2011.

Brief description of amendment: The amendment revises the current licensing basis regarding the manner in which service water is supplied to the component cooling heat exchangers by the main return valves and the bypass flow control valves.

Date of issuance: March 28, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 211.

Facility Operating License No. DPR–43: The amendment revised the Updated Safety Analysis Report.

Date of initial notice in ***Federal Register***: November 1, 2011 (76 FR 67487).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2012.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: March 3, 2011.

Brief description of amendment: The amendment revised Facility Operating License No. NPF–21 for the Columbia Generating Station. The changes either delete or modify existing license conditions which have been completed, modified, or are otherwise no longer in effect. The proposed changes were requested in order to support the Columbia license renewal effort.

Date of issuance: March 30, 2012.

Effective date: As of its date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 223.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License.

Date of initial notice in ***Federal Register***: May 31, 2011 (76 FR 31372).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 2012.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1 (GGNS), Claiborne County, Mississippi

Date of application for amendment: November 3, 2009, as supplemented by letters dated February 8, 2010, May 18, 2010, June 3, 2010, June 18, 2010, July 29, 2010, September 29, 2010, December 13, 2010, December 14, 2010, May 3, 2011, May 16, 2011, May 26, 2011, May 31, 2011, June 13, 2011, June 28, 2011, July 22, 2011, September 28, 2011, October 18, 2011, October 26, 2011, November 8, 2011, and December 1, 2011.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to reflect replacement of the existing Average Power Range Monitor (APRM), Local Power Range Monitor, and Flow Unit subsystems of the Neutron Monitoring System with a digital General Electric Hitachi Nuclear Measurement Analysis and Control (NUMAC) Power Range Neutron Monitoring System (PRNMS). The replacement system will also change GGNS's Oscillating Power Range Monitoring (OPRM) function from an Enhanced Option 1 A solution to Option III, which provides an automatic instability detect-and-suppress long-term reactor core stability solution. These changes are based on prior NRC approvals of licensing topical reports for NUMAC-based PRNMS equipment and other power plant experiences when performing similar changes. In addition, the amendment added a provision to the facility operating license that allows a monitoring period for the APRM scram function 2.f, ''OPRM Upscale,'' before this function's trip output to the reactor protection system trip system would be enabled. This license provision allows the limiting conditions for operation (LCOs) that would otherwise be

associated with the ''OPRM Upscale'' function 2.f to be deferred until the monitoring period is complete and the OPRM trip output is permanently enabled. The amendment also revised the TSs in accordance with Technical Specification Task Force Traveler (TSTF) TSTF–493, Revision 4, ''Clarify Application of Setpoint Methodology for LSSS [limiting safety system settings] Functions,'' to add surveillance notes in accordance with option A of TSTF 493, Revision 4, to address instrumentation LCO issues that could occur during periodic testing and calibration of instrumentation.

Date of issuance: March 28, 2012.

Effective date: As of the date of issuance and shall be implemented prior to startup from refueling outage number 18.

Amendment No: 188.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: January 5, 2010 (75 FR 462). The supplemental letters dated February 8, 2010, May 18, 2010, June 3, 2010, June 18, 2010, July 29, 2010, September 29, 2010, December 13, 2010, December 14, 2010, May 3, 2011, May 16, 2011, May 31, 2011, June 13, 2011, June 28, 2011, July 22, 2011, September 28, 2011, October 18, 2011, October 26, 2011, November 8, 2011, and December 1, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the ***Federal Register***.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2012.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: June 14, 2011.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.4.3.1, ''Leakage Detection Systems,'' for Limerick Generating Station, Units 1 and 2, to support the addition of an alternative method of verifying that unidentified leakage in the drywell is within limits. The alternate method uses the installed drywell equipment drain sump (DWEDS) monitoring system, with the drywell floor drain sump (DWFDS) overflowing to the DWEDS, to verify that Reactor Coolant System leakage in the drywell is within limits. This configuration would only be used when the DWFDS monitoring system is unavailable.

Date of issuance: March 29, 2012.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 208 and 169.

Facility Operating License Nos. NPF–39 and NPF–85. These amendments revised the license and the technical specifications.

Date of initial notice in ***Federal Register***: August 9, 2011 (76 FR 48912).

The Commission's related evaluation of the amendment is contained in Safety Evaluation dated March 29, 2012.

No significant hazards consideration comments received: No.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Meena Khanna.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: March 31, 2011.

Brief description of amendments: These amendments would revise the Technical Specifications (TSs) to define a new time limit for restoring inoperable Reactor Coolant System (RCS) leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; and make TS Bases changes that reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. Insofar as the St. Lucie Plant has custom TSs and TS Bases, to the extent practical, these changes are consistent with the U.S. Nuclear Regulatory Commission approved Revision 3 to TS Task Force Improved Standard TS Change Traveler TSTF–513, ''Revise PWR [pressurized-water reactor] Operability Requirements and Actions for RCS Leakage Instrumentation.'' The availability of this TS improvement was announced in the **Federal Register** on January 3, 2011 (76 FR 189), as part of the consolidated line item improvement process.

Date of Issuance: March 30, 2012.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1—212 and Unit 2—161.

Renewed Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: May 31, 2011 (76 FR 31374).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 2012.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, and Unit Nos. 3 and 4, Miami-Dade County, Florida

Date of application for amendments: July 16, 2010, as supplemented by letters dated July 18, 2011, August 1, 2011, October 27, 2011, and March 13, 2012.

Brief description of amendments: The amendments revised the Technical Specification requirements related to control room envelope habitability in accordance with Technical Specification Task Force (TSTF) Change Traveler TSTF–448, Revision 3, ''Control Room Habitability.'' TSTF–448 was made available by the NRC on January 17, 2007 (72 FR 2022) as part of the consolidated line item improvement process.

Date of issuance: March 30, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: Unit 3—248 and Unit 4—244.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: January 25, 2011 (76 FR 4386). The supplements dated July 18, 2011, August 1, 2011, October 27, 2011, and March 13, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 2012.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendment: March 28, 2011, as supplemented by letter dated February 5, 2012.

Brief description of amendment: The amendment revised TS 3.8.1, ''AC

[Alternating Current] Sources—Operating,'' to incorporate Technical Specification Task Force (TSTF) change traveler TSTF–163, Revision 2, ''Minimum vs. Steady State Voltage and Frequency,'' dated April 22, 1998. The amendments also revised the Final Safety Analysis Report Update (FSAR Update) to identify an exception to Revision 0 of NRC Regulatory Guide (RG) 1.9, ''Application and Testing of Safety-Related Diesel Generators in Nuclear Power Plants'' (issued as NRC Safety Guide 9, ''Selection of Diesel Generator Set Capacity for Standby Power Supplies,'' dated March 10, 1971).

The TS 3.8.1 surveillance requirements were revised per TSTF–163, Revision 2, to verify minimum frequency and voltage, and steady state frequency and voltage within limits following diesel generator start. The FSAR Update is revised to specify an exception to RG 1.9, Revision 0, Regulatory Position C.4, for frequency recovery for the Auxiliary Feedwater pump loading for DGs 1–1, 1–3, 2–2, and 2–3.

Date of issuance: March 29, 2012.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance. Implementation of the amendments shall also include revision of the Final Safety Analysis Report Update as described in the licensee's letter dated March 28, 2011.

Amendment Nos.: Unit 1—211; Unit 2—213.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** May 31, 2011 (76 FR 31375). The supplemental letter dated February 5, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 29, 2012.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of application for amendment: April 29, 2011, as supplemented October 21, 2011.

Brief description of amendment t: The amendments revise the Technical Specification (TS) section 3.4.15 RCS Reactor Coolant System Leakage Detection Instrumentation, in accordance with the Technical Specification Task Force Traveler TSTF–513–A, Revision 3, titled ''Revise PWR [Pressurized-Water Reactor] Operability Requirements and Actions for RCS Leakage [detection] Instrumentation.'' Specifically, the proposed amendment would revise the TS to define a new time limit for restoring inoperable RCS leakage detection instrumentation to operable status and establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable.

Date of Issuance: March 20, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos: Unit 1—187 and Unit 2—182.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: Amendment revises the Licenses and Technical Specifications.

Date of notice in ***Federal Register:*** June 14, 2011 (76 FR 34768).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 2012.

No significant hazards consideration comments received.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 22, 2011.

Brief description of amendment: The amendment approved changes to Technical Specification (TS) 5.3, ''Unit Staff Qualifications,'' by making two administrative changes to TS 5.3.1.1. Specifically, the changes removed the operator license applicants' education and experience eligibility requirements, and corrected inadvertent omissions in previous amendments relative to the Licensed Operators' and Senior Operators' qualification requirements.

Date of issuance: April 2, 2012.

Effective date: This license amendment is effective as of the date of its issuance and shall be implemented within 90 days of the date of issuance.

Amendment No.: 198.

Renewed Facility Operating License No. NPF–42. The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 23, 2011 (76 FR 52705).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 2012.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards

consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital information (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: February 28, as supplemented March 2 and March 9, 2012.

Description of amendment request: This amendment revised the FNP

Technical Specification (TS) 3.5.4, ''Refueling Water Storage Tank,'' to permit the use of a seismically qualified boundary valve under administrative controls for limited periods of time.

Date of issuance: March 24, 2012.

Effective date: April 23, 2012.

Amendment Nos.: Unit 1—188 and Unit 2—183.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: Amendment revises the technical specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. 77 FR 14441. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by May 8, 2012, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated March 24, 2012.

Attorney for licensee: M. Stanford Blanton, Balch and Bingham Law Firm, P.O. Box 306, Birmingham, Alabama 35201.

NRC Branch Chief: Nancy L. Salgado.

Dated at Rockville, Maryland, this 5th day of April 2012.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–9169 Filed 4–16–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of April 16, 23, 30, May 7, 14, 21, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 16, 2012

Monday, April 16, 2012

9 a.m. Affirmation Session (Public Meeting) (Tentative).

Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4) Docket Nos. 52–025–COL & 52–026–COL, Petitioners' Stay Motion (Feb. 9, 2012) (Tentative).

Week of April 23, 2012—Tentative

Tuesday, April 24, 2012

9 a.m. Briefing on Part 35 Medical Events Definitions—Permanent Implant Brachytherapy (Public Meeting) (Contact: Michael Fuller, 301–415–0520).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of April 30, 2012—Tentative

Monday, April 30, 2012

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (EEO) (Public Meeting) (Contact: Kristin Davis, 301–492–2208).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of May 7, 2012—Tentative

Friday, May 11, 2012

9 a.m. Briefing on Potential Medical Isotope Production Licensing Actions (Public Meeting) (Contact: Jessie Quichocho, 301–415–0209).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of May 14, 2012—Tentative

There are no meetings scheduled for the week of May 14, 2012.

Week of May 21, 2012—Tentative

There are no meetings scheduled for the week of May 21, 2012.

* 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 April 12, 2012, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that the above referenced Affirmation be held on April 16, 2012, with less than one week notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: April 12, 2012.

Richard J. Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2012–9316 Filed 4–13–12; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meetings; Board of Governors

DATES AND TIMES: Thursday, May 3, 2012, at 10 a.m.; and Friday, May 4, at 8:30 a.m. and 10:30 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., in the Benjamin Franklin Room.

STATUS: Thursday, May 3 at 10 a.m.—Closed; Friday, May 4 at 8:30 a.m.—Open; and at 10:30 a.m.—Closed.

MATTERS TO BE CONSIDERED:

Thursday, May 3 at 10 a.m. (Closed)

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Friday, May 4 at 8:30 a.m. (Open)

1. Approval of Minutes of Previous Meetings.
2. Remarks of the Chairman of the Board.
3. Remarks of the Postmaster General and CEO.
4. Committee Reports.
5. Quarterly Report on Financial Performance.
6. Quarterly Report on Service Performance.
7. Tentative Agenda for the June 14, 2012, meeting in Washington, DC.

Friday, May 4 at 10:30 a.m. (Closed—if needed)

1. Continuation of Thursday's closed session agenda.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2012–9394 Filed 4–13–12; 4:15 pm]

BILLING CODE 7710–12 P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 19, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, April 19, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Other matters relating to enforcement proceedings;

A litigation matter; and

An opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: April 13, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9304 Filed 4–13–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66784; File No. SR–CBOE–2012–035]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

April 11, 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 April 2, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''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 its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. Specifically, the Exchange proposes to increase voluntary professional and professional transaction fees for equity options and index, ETF, ETN and HOLDRs options (aside from OEX, XEO, SPXW and Volatility Indexes) from $0.20 per contract to $0.25 per contract (with the exception of transactions executed as Qualified Contingent Cross (''QCC'') trades or transactions executed through the Exchange's Automated Improvement Mechanism (''AIM'') when the professional or voluntary professional is on the Agency/Primary side). The fees for QCC and AIM Agency/Primary transactions will remain $0.20 per contract, (the same amount assessed to broker-dealers for such transactions). This change is proposed due to competitive reasons and to better reflect the costs associated with supporting a larger number of option classes, option series, and overall transaction volumes that have grown over time. Moreover, professional and voluntary professional trading volume has increased heavily over the past three years,[3] and the Exchange has therefore had to continually invest in software, hardware and personnel. Also, this $0.25 per contract fee is in line with similar fees offered on other exchanges,[4] and the Exchange believes professional and voluntary professional customers can bear this increased fee.

Because the regular voluntary professional and professional transaction fees discussed herein will be different from those for AIM Agency/Primary transactions, the Exchange also proposes to amend footnote (19) of the Fees Schedule to reflect the fact that the AIM Agency/Primary fee applies to voluntary professional and professional transactions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

[3] Exchange professional and voluntary professional trading volume has increased from 49,313 contract sides in February 2009 to 3,420,160 contract sides in February 2012.

[4] *See* NYSE Amex LLC (''Amex'') Fee Schedule, which assesses professional customers a $0.25 per contract fee for manual executions and a $0.23 per contract fee for electronic executions.

Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6], which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed increases in voluntary professional and professional fees are reasonable because of the growth in professional and voluntary professional trading volume.[7] This growth requires the Exchange to continually invest in software, hardware and personnel, the cost of which can reasonably be expected to be borne by these professional and voluntary professional market participants that cause these investments.

The Exchange believes the proposed increases in voluntary professional and professional fees are equitable and not unfairly discriminatory because the fees as noted are generally tied to an overall increase in activity on the Exchange. This heightened activity results in greater costs to the Exchange, which in turn is being passed back through to those participants who utilize the resources of the Exchange. Further, these increased fees will be applied equally to all market participants to whom they apply, and are in line with similar fees offered on other exchanges.[8] Maintaining $0.20 per contract voluntary professional and professional fees for contracts executed through QCC transactions or AIM is equitable and not unfairly discriminatory because this is the same amount as is being assessed to broker-dealers for QCC or AIM transactions (broker-dealers being similarly-situated as voluntary professionals and professionals for these purposes).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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

The Exchange neither solicited nor received comments on the proposed rule change.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* Note 3.

[8] *See* Note 4.

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)[9] of the Act and paragraph (f) of Rule 19b–4[10] thereunder. 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–CBOE–2012–035 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–CBOE–2012–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the 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–CBOE–2012–035 and should be submitted on or before May 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9141 Filed 4–16–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 C.F.R. 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66786; File No. SR–CME–2012–10]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Regarding Acceptance of Additional Interest Rate Swaps and Related Interbank Rates for Clearing

April 11, 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 March 30, 2012, the Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME proposes to amend its rules related to its business as a derivatives clearing organization offering interest rate swap (''IRS'') clearing services. More specifically, the proposed rule changes would facilitate the acceptance of Japanese Yen (''JPY''), Swiss Franc (''ZHF''), and Australian Dollar (''AUD'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

denominated interest rate swaps and related interbank rates for clearing. The proposed rule change also contains the corresponding fee changes. The text of the proposed rule change is available at CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

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 III 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 is registered as a derivatives clearing organization with the Commodity Futures Trading Commission and currently offers clearing services for IRS. The changes that are the subject of this filing are proposed rules that would facilitate CME's acceptance of JPY, ZHF, and AUD IRS and related interbank rates for clearing beginning April 16, 2012.

The proposed changes would be made to current CME Rule 90102.E. The proposed changes would simply add the following line items: AUD–BBR–BBSW; AUD–LIBOR–BBA; and AUD–AONIA–OIS–COMP.

In connection with the acceptance of such swaps, CME is also amending its fee schedules for OTC IRS to reflect the fees for JPY, ZHF and AUD denominated IRS. The proposed rule change features a new fee schedule that would be applicable to IRS Clearing Members clearing OTC IRS transactions and, separately, a new fee schedule that would be applicable to customers of IRS Clearing Members clearing OTC IRS transactions.

In addition, CME also proposes to make corresponding changes to its Manual of Operations for CME Cleared Interest Rate Swaps (''IRS Manual''). These changes would update the IRS Manual to reflect the new denominations and rate options and certain other associated operational changes.

CME believes the proposed rule change is consistent with the requirements of the Act and particularly with Section 17A of the Act because it involves clearing of swaps and futures contracts and thus relate solely to CME's swaps and futures clearing activities pursuant to its registration as a derivatives clearing organization under the Commodity Exchange Act (''CEA'') and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. CME further notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Act, such as promoting market transparency for over-the-counter derivatives and futures markets, promoting the prompt and accurate clearance of transactions, and protecting investors and the public interest. The proposed rule changes accomplish those objectives by offering investors clearing for an expanded range of IRS products at CME.

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. 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–2012–10 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–2012–10. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.* 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–2012–10 and should be submitted on or before May 8, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular with the requirements of Section 17A of the Act,[4] and the rules and regulations thereunder applicable to CME. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it will allow CME to offer its services in clearing IRS products to a broader category of IRS products and thereby should promote the prompt and

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

accurate clearance and settlement of derivative agreements, contracts, and transactions.[5]

In its filing, CME requested that the Commission approve this proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing. CME has articulated three reasons for so granting approval. One, the products covered by this filing and CME's operations as a derivatives clearing organization for such products are regulated by the CFTC under the CEA. Two, the proposed rule change relates solely to IRS products and therefore relate solely to CME's swaps clearing activities and do not significantly relate to CME's functions as a clearing agency for security-based swaps. Three, not approving this request on an accelerated basis will have a significant impact on the swap clearing business of CME as a designated clearing organization.

The Commission finds good cause for granting approval of the proposed rule change prior to the thirtieth day after publication of the notice of its filing because: (i) The proposed rule change does not significantly affect any securities clearing operations of the clearing agency (whether in existence or contemplated by its rules) or any related rights or obligations of the clearing agency or persons using such service; (ii) the clearing agency has indicated that not providing accelerated approval would have a significant impact on its IRS clearing business as a designated clearing organization; and (iii) the activity relating to the non-security clearing operations of the clearing agency for which the clearing agency is seeking approval is subject to regulation by another federal regulator.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CME–2012–10) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9143 Filed 4–16–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66785; File No. SR–FICC–2012–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Make a Technical Correction to the Rule Relating to the Calculation of Funds-Only Settlement Amounts for Repo Brokers

April 11, 2012.

I. Introduction

On February 14, 2012, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FICC–2012–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder. The proposed rule change was published for comment in the **Federal Register** on March 5, 2012.[3] The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change consists of modifications to Rule 19, Section 4 of the rules of the Government Securities Division (''GSD'') of FICC. The purpose of the rule change is to make technical corrections to GSD Rule 19 (Special Provisions For Brokered Repo Transactions), Section 4 (Calculations of Funds-Only Settlement Amounts for Repo Brokers) as described below. GSD Rule 19, Section 4 states that FICC may retain any amount of a Credit Forward Mark Adjustment Payment that is in excess of the Cap[4] and that interest earned on such amount shall be paid to the Repo Broker on the subsequent business day. The second part of this sentence is incorrectly stated because FICC pays interest to those who were debited forward mark adjustment amounts not those who were credited such amounts. On the following day (i.e., the day after the broker received the Credit Forward Mark Adjustment Payment) when the broker is debited the interest for the use of funds it received as a credit, the broker will be debited the interest on the amount that it actually received as a credit (i.e., it will not be debited interest for the amount of Credit payment withheld above the Cap). The rule is also revised to state that Repo Brokers with more than one Segregated Repo Account must aggregate Debit Forward Mark Adjustments and Credit Forward Mark Adjustment Payments in those accounts for purposes of the Cap. The Repo Brokers currently comply with this correction and the revision reflects current practice.

III. Discussion

Section 19(b)(2)(B) of the Act[5] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. In particular, Section 17A(b)(3)(F)[6] of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of such clearing agency or for which it is responsible. Because the proposed change would align FICC's rulebook with its practices and provide transparency in its processes, the Commission believes that the proposed rule change is consistent with FICC's obligations under the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2)[7] of the Act, that the proposed rule change (File No. SR–FICC–2012–01) be, and hereby is, approved.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–66485 (February 28, 2012), 77 FR 13164 (March 5, 2012). In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements is incorporated into the discussion of the proposed rule change in Section II below.

[4] The GSD rules define ''Cap'' as any Debit Forward Mark Adjustment Payment or Credit Forward Mark Adjustment Payment up to a dollar amount, as determined by FICC from time to time, that is automatically collected from or paid to the Repo Broker, as applicable.

[5] 15 U.S.C. 78s(b)(2)(B).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary .

[FR Doc. 2012–9142 Filed 4–16–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66781; File No. SR–CBOE–2012–036

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees Schedule

April 11, 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 April 2, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''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 its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change 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, Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. Specifically, the Exchange proposes to exclude executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in CBOE Rule 6.80 (''Linkage'') from counting towards the Exchange's Volume Incentive Program (the ''Program''), through which Trading Permit Holders (''TPHs'') are credited increasing per contract amounts for electronically executing increasing numbers of public customer contracts in multiply-listed classes. The Exchange does not benefit from transactions revenue resulting from the execution of public customer contracts that are routed to other exchanges through Linkage,[3] so providing a credit for such executions means that the Exchange is paying out monies for such executions without taking in any net revenue. The Exchange cannot continue to subsidize Linkage-related transactions in this manner, and therefore proposes to exclude such transactions from the Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed change to exclude Linkage-related executions from the Program is reasonable because the Exchange does not generally take in revenue for such customer transactions, and therefore it is not currently economically logical to provide a credit for such executions. This change is equitable and not unfairly discriminatory for similar reasons; it is certainly equitable to not provide a credit in circumstances wherein the Exchange does not collect a fee (otherwise, the recipients of said credits would be collecting ''free money'' from the Exchange), and it is not unfairly discriminatory as this exclusion applies to all parties to whom the Program applies.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange neither solicited nor received comments on the proposed rule change.

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)[6] of the Act and paragraph (f) of Rule 19b–4[7] thereunder. 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–CBOE–2012–036 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.

All submissions should refer to File Number SR–CBOE–2012–036. This file number should be included on the subject line if email is used. To help the

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Fees Schedule, Section 20.I.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f). [sic]

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 CBOE. 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–CBOE–2012–036 and should be submitted on or before May 8, 2012.[8]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9140 Filed 4–16–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66780; File No. SR–NASDAQ–2012–049]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4751

April 11, 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 April 5, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 is filing this proposed rule change to amend the definition of ''Directed Orders'' in Rule 4751(f)(9).

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.[3]

* * * * *

4751. Definitions

(a)–(e) No change.

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(8) No change.

(9) ''Directed Orders'' are orders that are directed to an exchange other than Nasdaq as directed by the entering party without checking the Nasdaq book. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. [This option may only be used for orders with time-in-force parameters of IOC.]

Directed Orders may be designated as intermarket sweep orders by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act). A broker-dealer that designates an order as an intermarket sweep order has the responsibility of complying with Rules 610 and 611 of Regulation NMS. *Directed Orders marked as intermarket sweep may only be used with time-in-force parameters of IOC.*

Directed Orders may not be directed to a facility of an exchange that is an affiliate of Nasdaq except for Directed Orders directed to the NASDAQ OMX BX Equities Market or to the NASDAQ OMX PSX facility of NASDAQ OMX PHLX.

(10)–(13) No change.

(g)–(i) 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, 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

Rule 4751(f)(9) defines a ''Directed Order'' as an order that is directed to an exchange other than NASDAQ as directed by the entering party without checking the NASDAQ book and, if unexecuted, the order (or unexecuted portion thereof) must be returned to the entering party. Currently, however, this option is only available for Directed Orders with time-in-force (''Time-in-Force'') [4] parameters of immediate or cancel (''IOC'').

NASDAQ proposes to modify Rule 4751(f)(9) by removing the above restriction. The elimination of this restriction would then allow the Nasdaq Market Center (''System'') via its broker-dealer, NASDAQ Execution Services (''NES''), to direct customer orders that would post liquidity to particular away markets. This would further enable members to specify the maximum length of time to allow these orders to remain booked in accordance with any applicable rules of the away market. The proposed rule change would enhance order execution opportunities for market participants by increasing the mobility of liquidity, augmenting liquidity at less liquid venues and generally increasing the interconnectedness of the exchanges.

Additionally, Rule 4751(f)(9) would be clarified to specifically state that a Directed Order that is marked as an intermarket sweep order must be marked as IOC. By making this clarification, NASDAQ will prevent its routing broker from locking or crossing an away market because of customer instructions.

The proposed rule change, in essence, makes the Exchange's Directed Order similar to the BATS Exchange's ''Modified Destination Specific Order.'' [5] The remaining difference

[8] 17 CFR 200.30–3(a)(12).

[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 Nasdaq Manual found at *http://nasdaqomx.cchwallstreet.com.*

[4] Time-in-Force denotes the period of time that the Nasdaq Market Center will hold an order for potential execution. *See* NASDAQ Rule 4751(h).

[5] *See* Securities Exchange Act Release No. 58546 (September 15, 2008), 73 FR 54440 (September 19, 2008) (SR–BATS–2008–003). *See* BATS Rule 11.9(c)(13).

between the two order types is that for the BATS Modified Destination Specific Order, orders that are not executed in full are returned to the exchange, while for NASDAQ Directed Orders, orders that are not executed in full would be returned to the customer.

The only reason initially for the inclusion of this restrictive clause in Rule 4751(f)(9) was to accurately reflect the configuration of the Directed Order router. Since NASDAQ now intends to provide all Directed Orders with the option of being directed to away markets to post liquidity, the configuration of the System must be similarly updated to reflect this change.

The elimination of this restriction also serves to increase investor choice. Specifically, Directed Order types that do not include an IOC instruction would now provide investors with an additional method of connecting to another exchange for the purpose of providing liquidity. Users of NASDAQ's router would be able to, for example, post two-sided quotes on any exchange without having to establish connectivity to these exchanges separately. The proposed rule change also would improve the competitive landscape by creating a means by which NASDAQ customers could post liquidity at away markets and, thereby, remove barriers to participation on these markets.

Finally, NASDAQ already permits order types that allow for the posting of liquidity at away markets. In particular, the DOTI strategy has the ability to post to the New York Stock Exchange (''NYSE'').[6] DOTI is a routing option for orders that the entering firm wishes to direct to the NYSE or NYSE Amex without returning to the System. DOTI orders check the System for available shares and then are sent to destinations on the System routing table before being sent to NYSE or NYSE Amex, as appropriate. DOTI orders do not return to the System book after routing. The entering firm may alternatively elect to have DOTI orders check the System for available shares and thereafter be directly sent to NYSE or NYSE Amex as appropriate.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, by eliminating the restriction which permits only Directed Orders with Time-in-Force parameters of IOC, as well as by clarifying that a Directed Order that is marked as an intermarket sweep order must also be marked as IOC, NASDAQ believes that the proposed rule change will enhance the interconnectedness of the national market system, increase investor choice, and improve order execution opportunities for market participants by increasing the mobility of liquidity, removing barriers to participation, and augmenting liquidity at less liquid venues. Thus, the proposed rule change will directly foster cooperation and will remove impediments to and perfect the mechanism of a free and open market, and is fully consistent with the protection of investors and the public interest.

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. NASDAQ believes that the proposed rule change will serve to increase the interconnectedness of the national market system and also serves to increase investor choice by allowing the System via NES to direct customer orders that would post liquidity to particular away markets. The changes will also enhance NASDAQ's competitive stance vis-à-vis the Modified Destination Specific Order of the BATS Exchange.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

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 change 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 Number SR–NASDAQ–2012–049 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–2012–049. 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

[6] *See* NASDAQ Rule 4758(a)(1)(A).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2012–049 and should be submitted on or before May 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9139 Filed 4–16–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

City Capital Corporation; Order of Suspension of Trading

April 13, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of City Capital Corporation (''City Capital''). Questions have also arisen regarding the accuracy and adequacy of publicly available information about City Capital because it has not filed any periodic reports since its delinquent 2009 Form 10–K, filed June 15, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on April 13, 2012 and terminating at 11:59 p.m. EDT on April 26, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–9302 Filed 4–13–12; 11:15 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Public Availability of U.S. Small Business Administration FY 2010 Service Contract Inventory

AGENCY: U.S. Small Business Administration.

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 Small Business Administration 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 Small Business Administration has posted its inventory and a summary of the inventory on the Small Business Administration homepage at the following link: *http://www.sba.gov/content/service-contract-inventory.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to William Cody in the Procurement Division at (303) 844–3499 or *William.Cody@sba.gov.*

Dared: March 7, 2012.

Jonathan I. Carver,

Chief Financial Officer/Associate Administrator for Performance Management, Office of the Chief Financial Officer.

[FR Doc. 2012–8997 Filed 4–16–12; 8:45 am]

BILLING CODE M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Emergency Clearance Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act (PRA) of 1995, effective October 1, 1995. This notice includes requests for expedited emergency clearance of a new collection and a revision of an existing OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Director at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, mail address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCRDP, Attn: Reports Clearance Officer, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OPLM.RCO@ssa.gov.*

SSA submitted the information collections below to OMB for Emergency Clearance. SSA is requesting Emergency Clearance from OMB no later than May 17, 2012. Your comments regarding the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than May 17, 2012. Individuals can obtain copies of the collection instruments by contacting the SSA Reports Clearance Director at the above fax number or email address.

1. Protecting the Public and Our Personnel To Ensure Operational Effectiveness (RIN 0960–AH35), Regulation 3729F—20 CFR 422.905, 422.906—0960–NEW

Background

When members of the public demonstrate disruptive, violent, or threatening actions or behavior toward SSA employees, the agency will take measures to ensure the safety of everyone involved, including banning such individuals from appearing in person at any of our field offices. In lieu of in-person office visits, the agency provides services to banned individuals through alternate methods, including our 800 number, online applications, mail services, or, in limited circumstances, face-to-face services by appointment with additional security present.

On September 2, 2011, the agency published regulations and notifications

processes for the ban decision at 76 FR 54700. The current information collection request (ICR) requests approval for the public reporting burdens from the interim final rules.

Information Collection Description

The interim final ban decision rules contain two public reporting burdens:

• 20 CFR 422.905—After SSA issues a ban decision against an individual, the individual has 60 days to appeal that determination. Individuals must submit a written appeal stating why they believe SSA should rescind the ban and allow them to conduct business with us on a face-to-face basis in one of our offices. There is no printed form for this request; banned individuals create their own written statement of appeal, and submit it to a sole decision-maker in the Regional Office of the region where the ban originated. The individuals may also provide additional documentation to support their appeal.

• 20 CFR 422.906—Three years after the original ban decision, banned individuals may re-submit a written appeal of the determination. The same criteria apply as for the original appeal: (1) It must be in writing; (2) it must go to a sole decision-maker in the Regional Office of the region where the ban originated for review; and (3) it may accompany supporting documentation.

Respondents for this collection are individuals appealing their banning from SSA field offices.

Justification for Emergency Clearance

When we originally published the banning decision rules at 76 FR 54700, the agency did not anticipate the number of respondents would meet the threshold for PRA clearance. Since then, our field offices have provided us with evidence indicating we will meet and exceed this threshold, so we are pursuing OMB PRA clearance now. Because of the compelling personal security issues the banning rules address, we are pursuing expedited emergency clearance from OMB no later than May 17, 2012.

Type of Request: Emergency request for a new information collection.

Regulation section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
20 CFR 422.905	75	1	15	19
20 CFR 422.906	75	1	20	25
Total	150			44

2. The Ticket To Work and Self-Sufficiency Program—20 CFR 411—0960–0644

Background

SSA's Ticket to Work Program (TTW) transitions Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) recipients toward independence by allowing them to receive Social Security payments while maintaining employment under the auspices of the program. SSA uses service providers, called Employment Networks (ENs), to supervise participant progress through the stages of ticket program participation, such as job searches and interviews, progress reviews, and changes in ticket status. ENs can be private for-profit and non-profit organizations, as well as state vocational rehabilitation agencies (VRs).

SSA and the ENs utilize the Ticket to Work Program Manager to operate the TTW program and exchange information about TTW participants. For example, the ENs use Program Manager to provide updates on tasks such as selecting a payment system or requesting payments for helping the beneficiary achieve certain work goals. Since the ENs are not PRA-exempt, the multiple information collections within the TTW Program Manager require OMB approval, and we clear them under this ICR number.

Information Collection Description

SSA requires ENs to submit multiple types of TTW program and participant information, resulting in 13 information collection instruments (described below in categories a–i; if we do not mention a specific form number, we require information in writing with no established form):

a. Establishing Ticket Assignments and Ticket Use: Forms SSA–1365 and SSA–1370 collect information regarding the establishment of the Ticket assignment and the Individual Work Plan;

b. Requesting Ticket Unassignments and Notifying of VR Case Closures in writing;

c. Tracking Progress: SSA–1375—request for certification of work and educational progress from individuals; SSA–L1377—request for certification of work and educational progress from ENs and VR agencies; request for Ticket-use status after not making timely progress; request to place a Ticket in inactive status;

d. Selecting a Payment System for EN use;

e. Reporting Referral Agreement Activity of the ENs;

f. Requesting EN Payments through use of the SSA–1389, SSA–1391, SSA–1393, SSA–1396, SSA–1398, and SSA–1399; reporting split payment situations using the SSA–1401;

g. EN Reporting of Periodic Outcomes;

h. Dispute Resolution between ENs, VR agencies, and individual Ticket holders;

i. EN Contract Changes report.

The respondents for these collections are the ENs, and by extension, the TTW participants from whom they obtain information to complete some of these collections.

Modality of Collection and Proposed Changes

Although it has used some semi-electronic and electronic collection methodologies, such as faxes and, to a limited extent, the Internet, to date, the majority of the Program Manager information has been written paper documentation. To redress this, the agency is planning to implement a new web-based Secure Provider Portal that ENs and the agency can use to quickly and securely exchange information and update a TTW ticket holder's file.

Justification for Emergency Clearance

The agency believes the new Web-based portal will represent a significant savings of time and resources, both for the agency and for the participating ENs. In a time when government agencies such as ours are operating under severe budgetary and human capital constraints, we believe we have an obligation to immediately implement a program that would make such a drastic difference. For this reason,

because of the overwhelmingly positive and eager interest ENs have expressed in using the web portal, and because of manpower limitations we will be facing in the upcoming months, SSA is seeking expedited emergency clearance of this collection.

Delayed implementation of the Web portal could have the following consequences: (1) Reduced productivity for the second half of FY 2012 (since it will continue to take ENs longer to submit requests, and it will take us longer to process them); (2) subsequent delayed services to beneficiaries; and (3) an inability to process payment requests to EN's and State VR's for the services they provide beneficiaries. In addition, if the portal is not available for use until shortly before we make the remaining contract reductions, and there are problems with transitioning to it, there will not be labor to process ticket assignments, payment requests, and other incoming documents, or to fulfill requests for reports. This would bottleneck or possibly suspend some daily TTW operations.

Finally, the agency is only planning to pilot this collection with a limited number of ENs after receiving emergency OMB approval. We will not expand rollout to all ENs until seeking standard OMB clearance. We are asking for OMB approval of this Emergency Clearance no later than May 17, 2012.

Type of Request: Emergency request for a new information collection.

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
a. SSA–1365 (Paper)	2,370	1	15	593
a. SSA–1365 (Portal)	2,370	1	11	434
a. SSA–1370 (Paper)	3,913	1	60	3,913
a. SSA–1370 (Portal)	3,912	1	45	2,934
a. Electronic file submission	35,584	1	5	2,965
b. Requesting unassignments (written)	4,988	1	15	1,247
b. Requesting unassignments (Portal)	4,988	1	11	914
b. VR case closures	8,505	1	5	709
c. Request to place Ticket in inactive status	6	1	30	3
c. SSA–1375	112,362	1	15	28,091
c. SSA–L1377 (Paper)	43,216	1	15	10,804
c. SSA–L1377 (Portal)	21,608	1	11	3,961
c. Request to reenter Ticket-Use status	41	1	30	21
d. Selecting a payment system	5	1	10	0
e. Reporting referral agreements	1*	1	480	8
f. Requesting EN payments: SSA–1389; SSA–1391; SSA–1393; SSA–1396; SSA–1398; SSA–1399	14,025	1	40	9,350
f. Requesting EN payments (Portal)	14,025	1	22	5,142
f. Requesting EN payments (Automatic Payments)	28,050	1	0	0
f. SSA–1401 (split payment form)	100	1	20	33
g. Periodic outcome reporting	1371	1	60	1371
h. Dispute resolution	2	1	120	4
i. EN contract changes	210	1	10	35
Total	301,652	.....	.....	72,534

*(None received in 2010 or 2011.)

Dated: March 12, 2012.

Faye Lipsky,

Reports Clearance Director, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2012–9203 Filed 4–16–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7848]

Culturally Significant Objects Imported for Exhibition Determinations: ''Edouard Vuillard: A Painter and His Muses, 1890–1940''

ACTION: Notice, correction.

SUMMARY: On April 9, 2012, notice was published on page 21142 of the **Federal Register** (volume 77, number 68) of determinations made by the Department of State pertaining to the exhibit ''Edouard Vuillard: A Painter and His Muses, 1890–1940.'' The reference notice is corrected to accommodate additional objects to be included in the exhibition. Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the additional objects to be included in the exhibition ''Edouard Vuillard: A Painter and His Muses, 1890–1940,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the additional exhibit objects at The Jewish Museum, New York, New York, from on or about May 4, 2012, until on or about September 23, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the additional exhibit object, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 11, 2012.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–9235 Filed 4–16–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

[Docket No. NHTSA–2012–0043]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: NHTSA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. Before a Federal agency can collect certain information from the public, it must receive approval from the OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. The collection involves recruitment material, participants' eligibility, and debriefing questionnaires. The information to be collected will be used to describe the study sample and gather information about participant experience with experiments related to the Pedestrian Safety Enhancement Act of 2010 (PSEA).

DATES: Written comments should be submitted by June 18, 2012.

ADDRESSES: You may submit comments identified by Docket No. NHTSA–2012–0043 through one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help'' or ''FAQ.''
- *Hand Delivery:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

Privacy Act: Anyone is able to 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Lisandra Garay-Vega, 202–366–1412, Vehicle Safety Research, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB:

OMB Control Number: Not assigned.

Title: Recruitment and debriefing of human subjects for observational experiments to test auditory perception of vehicle sounds.

Form Numbers: None.

Type of Review: New Information Collection.

Abstract: The Pedestrian Safety Enhancement Act of 2010 (PSEA) requires NHTSA to conduct a rulemaking to establish a Federal Motor Vehicle Safety Standard (FMVSS) requiring an alert sound for pedestrians to be emitted by electric vehicles or hybrid vehicles (EVs and HVs). The goal is to establish performance requirements for an alert sound that allows blind and other pedestrians to reasonably detect a nearby EV or HV.

Human factors observational experiments in a laboratory setting are proposed to examine participants' response to different sound characteristics. The Volpe National Transportation Systems Center (Volpe Center), which is an element of the U.S. Department of Transportation (U.S. DOT), Research and Innovative Technology Administration (RITA), would conduct this research under an Inter-Agency Agreement (IAA) with the NHTSA. The collection of information consists of: (1) Recruitment material and eligibility questionnaire, and (2) debriefing questionnaire. Information would be used to verify eligibility, to describe the study sample, and to gather information about participant experience with the experiment. Information to be collected includes, for example; age, gender, whether participant considers him/herself an independent traveler and travels regularly; whether the participant is legally blind or sighted; whether the participant self-reported to have normal hearing in both ears without hearing aids; whether they have normal manual dexterity in both hands (for prompt button pressing); and overall experience while participating in the experiment.

Respondents: Legally blind and sighted volunteers to be recruited in the Greater Boston Area, Massachusetts. Researchers would reach out to local organizations that provide services to the local blind community such as the Carroll Center for the Blind, the Perkins School for the Blind, and the Bay State Council of the Blind. Participants would also be recruited among federal employees at the Volpe Center in Cambridge, MA. Participants who are not Volpe Center employees or members of the blind community may also be recruited from the general population within the Greater Boston Area through for example, university bulletin boards and flyers.

Estimated Number of Respondents: 90.

Estimated Number of Responses: One response per person to each of 10–15 questions total.

Estimated Total Annual Burden: 1 minute per question per respondent (15 to 22.5 hours total).

Estimated Frequency: One time.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Tim Johnson,

Chief, Electronic Systems Safety Division, Vehicle Safety Research.

[FR Doc. 2012–9159 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting: RTCA Special Committee 227, Standards of Navigation Performance

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of RTCA Special Committee 227, Standards of Navigation Performance.

SUMMARY: The FAA is issuing this notice to advise the public of the second meeting of RTCA Special Committee 227, Standards of Navigation Performance.

DATES: The meeting will be held May 7–11, 2012, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 227. The agenda will include the following:

May 7–11, 2012

- Welcome/Introductions/ Administrative Remarks
- Agenda Overview
- Review of SC–227 Workspace Changes/Process, and MASPS/ MOPS Workgroup Leadership
- Review Minutes and Action Items
  - Update/approve minutes
- Review of NextGen PBN Integrated Portfolio and Strategy Activities
- Review/Discussion/Approval of MASPS Action Items and Proposed Updates
  - Subgroup breakouts to finalize updates/changes to proposal
  - Plenary discussion/update of updates/changes
- Review of What's Applicable to MOPS
- Other Business
- Establish Agenda for Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 11, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–9193 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In March 2012, there were four applications approved. This notice also includes information on three applications, approved in February 2012, inadvertently left off the February 2012 notice. Additionally, four approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Pitt County—City of Greenville Airport Authority, Greenville, North Carolina.

Application Number: 12–05–U–00–PGV.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue Approved for Use in this Decision: $36,538.

Charge Effective Date: February 1, 2009.

Charge Expiration Date: September 1, 2010.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Jetway loading bridge.

Decision Date: February 7, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Rau, Atlanta Airports District Office, (404) 305–7005.

Public Agency: City of Bangor, Maine.

Kevin Application Number: 12–03–C–00–BGR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $2,576,497.

Earliest Charge Effective Date: May 1, 2012.

Estimated Charge Expiration Date: June 1, 2015.

Class of Air Carriers Not Required to Collect PFC's: On demand air taxi commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Bangor International Airport.

Brief Description of Projects Approved for Collection and USE:

Electrical improvement.
Terminal building renovations, phase I.
PFC application costs.

Decision Date: February 27, 2012.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: City of Rock Springs/ County of Sweetwater, Rock Springs, Wyoming.

Application Number: 12–04–C–00–RKS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $461,933.

Earliest Charge Effective Date: September 1, 2012.

Estimated Charge Expiration Date: December 1, 2017.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Rehabilitate terminal access road.

Acquire aircraft rescue and firefighting equipment.
Rehabilitate non-revenue parking lot.
Rehabilitate runway 3/21.
Acquire snow removal equipment.
Design snow removal equipment building.
Seal coat airfield.
Install terminal fire alarm system.
Construct snow removal equipment building.
Construct service road.
Conduct new taxiway environmental assessment.
Acquire snow removal equipment.
Renovate terminal building.

Decision Date: February 27, 2012.

FOR FURTHER INFORMATION CONTACT: Jesse Lyman, Denver Airports District Office, (303) 342–1262.

Public Agency: County of Beaufort, Beaufort, South Carolina.

Application Number: 12–04–C–00–HXD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $2,619,447.

Earliest Charge Effective Date: May 1, 2012.

Estimated Charge Expiration Date: July 1, 2022.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Hilton Head Island Airport.

Brief Description of Projects Approved for Collection:

Land acquisition for airfield deficiency correction.
Airfield deficiency correction.
Runway 3 engineered materials arresting system.
Land acquisition for runway extension and road relocation.
700-foot runway extension (design and construction).
Runway safety area (east-west) drainage.
Transitional surface obstruction removal (trees).

Brief Description of Projects Approved for Collection and Use:

Air traffic control tower land acquisition.
Air traffic control tower construction.
Runway 03/21 widening.
New aircraft rescue and firefighting vehicle.
New aircraft rescue and firefighting building.
Update airport master plan.
Runway 03 tree removal.
Runway 21 tree obstruction removal (on and off airport).
Commercial service terminal expansion.
Runway extension benefit cost analysis/environmental documentation.
Runway 03 obstruction removal (trees).
PFC preparation.

Brief Description of Disapproved Projects:

400-foot runway extension (design and construction).
Runway 21 engineered materials arresting system.
Relocation of Beach City Road (design and construction).

Determination: These projects do not meet the requirements of §§ 158.15(c) and 158.30(b)(3)(iii). The public agency did not provide adequate justification information.

Decision Date: March 7, 2012.

FOR FURTHER INFORMATION CONTACT: Anna Lynch, Atlanta Airports District Office, (404) 305–7146.

Public Agency: City of Manhattan, Kansas.

Application Number: 12–03–C–00–MHK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $524,222.

Earliest Charge Effective Date: June 1, 2018.

Estimated Charge Expiration Date: June 1, 2020.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled/on-demand air taxi operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Manhattan Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Runway 3/21 remarking.
Master plan update.
Part 150 noise study.
2007 land acquisition.
Runway 3/21 and taxiway A extension; runway 13/31 reconstruction and extension.
Navigational aid relocation.
Shift runway 3/21, phase 3.
Shift runway 3/21, phase 4.
Perimeter fencing.
Airport passenger terminal study.

Decision Date: March 8, 2012.

FOR FURTHER INFORMATION CONTACT: Mark Schenkelberg, Central Region Airports Division, (816) 329–2645.

Public Agency: City of Colorado Springs, Colorado.

Application Number: 12–19–C–00–COS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $728,878.

Earliest Charge Effective Date: April 1, 2015.

Estimated Charge Expiration Date: December 1, 2015.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Install primary crash network.
Security enhancements—access control 1.
Acquire computer based interactive training system.
Security enhancements—access control 2.

Brief Description of Project Partially Approved for Collection and Use:

Construct integrated operations command center.

Determination: The FAA finds that the space for a training room and records retention are not required for emergency response purposes and so those componenets are not PFC-eligible.

Decision Date: March 15, 2012.

FOR FURTHER INFORMATION CONTACT: Jesse Lyman, Denver Airports District Office, (303) 342–1262.

Public Agency: Massachusetts Port Authority, Boston, Massachusetts.

Application Number: 12–07–U–00–BO5.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue Approved for Use in this Decision: $18,278,000.

Earliest Charge Effective Date: August 1, 2016.

Estimated Charge Expiration Date: December 1, 2023.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Development of runway safety area for runway 33L.

Decision Date: March 20, 2012.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
08–06–C–01–LAW Lawton, OK	03/13/12	$917,000	$1,075,784	11/01/13	11/01/13
09–07–C–01–GRK Killeen, TX.	03/13/12	2,300,000	2,565,711	12/01/12	01/01/13
09–08–C–01–ALO Waterloo, IA.	03/23/12	201,930	262,180	02/01/13	11/01/13
11–10–C–01–ALO Waterloo, IA.	03/23/12	97,420	133,685	06/01/14	08/01/15

Issued in Washington, DC on April 6, 2012.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2012–8977 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327, and U.S Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration—National Marine Fisheries Service.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration—National Marine Fisheries Service that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, State Route 76 (SR–76) from South Mission Road in Bonsall to just east of Interstate 15 (I–15), including interchange improvements, in Fallbrook, County of San Diego, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 14, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then the shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Bruce April, Deputy District Director, Division of Environmental Analysis, California Department of Transportation, 4050 Taylor Street, MS 242, San Diego, CA 92110, Regular Office Hours: 8 a.m. to 5 p.m., Telephone number 619–688–0100, email *Bruce.April@dot.ca.gov.* For the U.S. Army Corps of Engineers, Ms. Stephanie J. Hall, District 11 Liaison, 915 Wilshire Boulevard, 13th Floor, Los Angeles, CA 90017–3401, Regular Office Hours: 8 a.m. to 5 p.m., Telephone number 213–452–3410, email *Stephanie.J.Hall@usace.army.mil,* the Clean Water Act Section 404 Permit is pending. For the U.S. Fish and Wildlife Service, Ms. Sally Brown, Caltrans Liaison, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011, Regular Office Hours 8 a.m. to 5 p.m., Telephone number 760–431–9440, the Biological Opinion was received on September 22, 2011. For the National Oceanic and Atmospheric Administration—National Marine Fisheries Service, Mr. Stan Glowacki, Protected Resources Division, Southwest Regional Office, 501 West Ocean Boulevard, Long Beach, CA 90802–4213, Telephone number 562–980–4061, email *stan.glowacki@noaa.gov,* the Section 7 consultation was completed on June 8, 2011.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The project is located in northern San Diego County on SR–76 from South Mission Road in the unincorporated community of Bonsall to just east of I–15, including interchange improvements in the unincorporated community of Fallbrook, covering a distance of approximately 5.6-miles on SR–76 and 1.2 miles on I–15 (PM 12.1/17.7; 46.1/47.3). The project would construct SR–76 as a four-lane conventional highway including interchange improvements. The Existing Alignment Alternative with a partial cloverleaf interchange design has been selected as the Preferred Alternative and also as the Least Environmentally Damaging Practicable Alternative (LEDPA). The FHWA project reference number is FHWA–CA–EIS–10–01–F.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on January 5, 2012, in the FHWA Record of Decision (ROD) issued on March 23, 2012, and in other documents in the FHWA project records. The FEIS, ROD, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist11/envir.htm.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA);
3. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU);
4. Department of Transportation Act of 1966;
5. Federal Aid Highway Act of 1970;
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. Farmland Protection Policy Act of 1981;
11. Title VI of the Civil Rights Act of 1964;
12. Uniform Relocation Assistance and Real Property Acquisition Act of 1970;

13. National Historic Preservation Act of 1966;

14. Historic Sites Act of 1935;

15. Resource Conservation and Recovery Act of 1976;

16. Executive Order 11990, Protection of Wetlands

17. Executive Order 13112, Invasive Species;

18. Executive Order 11988, Floodplain Management; and,

19. Executive Order 12898, Environmental Justice.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Issued on: April 11, 2012.

Manuel E. Sánchez,

Senior Transportation/Border Engineer, Federal Highway Administration, San Diego, California.

[FR Doc. 2012–9205 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0378]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twelve individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective April 17, 2012. The exemptions expire on April 17, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202)-366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On February 22, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 10610). That notice listed twelve applicants' case histories. The twelve individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the twelve applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The twelve exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, severed optic nerve, detached retina, corneal scar, complete loss of vision, macular scarring and prosthesis. In most cases, their eye conditions were not recently developed. Ten of the applicants were either born with their vision impairments or have had them since childhood. The two individuals that sustained their vision conditions as adults have had them for a period of 17 to 45 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these twelve drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven

CMVs with their limited vision for careers ranging from 2 to 40 years. In the past 3 years, none of the drivers were involved in crashes, and two were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the February 22, 2012 notice (77 FR 10610).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the twelve applicants, none of the drivers were involved in crashes and two were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the twelve applicants listed in the notice of February 22, 2012 (77 FR 10610).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the twelve individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following:

(1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the twelve exemption applications, FMCSA exempts Robert J. Abbas (MN), Paul T. Browning (MN), Robert P. Clark (NY), Carey C. Earwood (AL), Cheryl G.

Johnson (IN), Kevan J. Larson (ID), Melvin D. Rolfe (MN), Gilbert M. Rosas (AZ), Kim A. Shaffer (PA), Larry W. Slinker (VA), Lonnie J. Supanchick (NV) and Gerald W. Warner (OH) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: April 11, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–9160 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0019]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below. FRA assigned the petition Docket Number FRA–2012–0019.

Applicant

Norfolk Southern Corporation, Mr. B. L. Sykes, Chief Engineer, C&S Engineering, 1200 Peachtree Street NE., Atlanta, GA 30309.

The Norfolk Southern Railway (NS) seeks approval of the proposed modification of a traffic control system. The modifications consist of the replacement of a power-operated switch with a hand-operated switch and the shortening of the control point limits by replacing the 4E–1 and 4E–2 signals with the 4E signal, which will be moved east of the Horseheads Industrial Track at Control Point Horseheads on the Southern Tier (Milepost SR–276.9 in Horseheads, NY). The reason given for the replacement is that the power-operated switch is no longer needed in today's operation.

Any interested party desiring to protest the granting of an application shall set forth, specifically, the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should be identified by Docket Number FRA–2012–0019 and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic site.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 1, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477, or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on April 11, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–9138 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–1999–6135]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards from New Jersey Transit (NJT). NJT seeks a modification to the original terms and conditions of its waiver of compliance that was granted in 1999. As part of NJT's construction of a future Pennsauken transfer station (allowing transfers between Atlantic City commuter trains and the River Line), NJT is lengthening the Pennsauken siding at Control Point (CP) 55 to now include Minson siding; incorporating trackwork improvements and changes to the signal and train control (S&TC) system. NJT submits that this request is consistent with the waiver process for shared use. (See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000); see also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000).)

Specifically, in April 2007, FRA approved NJT's S&TC improvements between CP45 and CP70 (which includes CP Ross, Minson siding, and Pennsauken siding) along its River Line

rail fixed guideway light-rail transit system. NJT calls this 'scripted temporal separation,' which maintains the required temporal separation, but provides for superior use of the existing infrastructure by expanding the passenger period, and allowing Conrail some increased flexibility in and out of the Minson siding to Pavonia Yard. The addition of a future Pennsauken transfer station on the single track south of CP Ross at Milepost 4.9 will add time to trains operating northbound and southbound that meet at CP Ross, thus resulting in significant headway degradation. NJT claims that by lengthening Pennsauken siding to include Minson siding, headway degradation will be mitigated. This petition serves to notify FRA of NJT's plan to modify the trackwork, S&TC, and operational plans as part of this Pennsauken siding lengthening and Pennsauken transfer station construction.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–6135) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 1, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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 the U.S. Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Page 19477), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on April 11, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–9127 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0033]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 22, 2011, Columbia Star Dinner Train (CSDT) of Columbia, MO, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223. FRA assigned the petition Docket Number FRA–2011–0033.

CSDT has petitioned FRA for a permanent waiver of compliance for two locomotives, CESX 1950 and CESX 1951, from a portion of the railroad safety glazing standards, 49 CFR Section 223.11(b), which require FRA Type II material in all side-facing windows of the locomotive cab. CSDT states that both locomotives are currently equipped with fully compliant FRA Type I front-facing glazing per 49 CFR 223.11(a), and that the locomotives do not have rear-facing glazing. CSDT further states that these Electro-Motive Division F–7 locomotives, manufactured in 1950 (CESX 1950) and 1953 (CESX 1951), are of such design that impedes installation of thicker FRA Type II glass without significant modifications in the side and wing windows. As an alternative, the side-facing windows currently consist of safety type glass that is in good condition, clear and unscratched. Additionally, CSDT operates on approximately 18 miles of the Columbia Terminal Railroad (COLT) trackage, through generally rural countryside, at speeds between 10 and 15 mph despite the fact that the maximum authorized speed on this COLT trackage is 25 mph for freight. CSDT states that there has been no known incident of broken windows as a result of vandalism on the COLT and, therefore, no worker has been injured in the past. CSDT is requesting this relief because of the prohibitive cost involved in retrofitting the two locomotives with certified glazing. CSDT believes that the retained funds can best be used for other maintenance projects on their railroad.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 1, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on April 11, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–9129 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0009]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated January 19, 2012, Union Pacific Railroad (UP) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 242.403(b), (c)(1)–(3), (d), (e)(1)–(4), (e)(6)–(11), (e)(13),and f(1)–(2). FRA has assigned the petition Docket Number FRA–2012–0009.

The Confidential Close Call Reporting System (C3RS) pilot project for the UP North Platte Service Unit was initially approved by FRA on September 12, 2007. In Docket Number FRA–2006–25862, UP requested and received a waiver of compliance from certain provisions at 49 CFR part 240 to support the C3RS demonstration pilot project. It was initially granted for 5 years, and was recently extended until November 18, 2014. UP seeks to further support the pilot project by requesting similar relief from various sections of 49 CFR part 242, which are FRA's new conductor certification regulations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays. If you do not have access to the Internet, please contact FRA's Docket Clerk at (202) 493–6030 who will provide necessary information concerning the contents of the petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 1, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on April 11, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–9128 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0038]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated March 22, 2012, CSX Transportation (CSX) has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA has assigned the petition Docket Number FRA–2012–0038.

Applicant

Mr. David B. Olson, Chief Engineer Communications and Signals, CSX Transportation, 500 Water Street, Speed Code J–350, Jacksonville, FL 32202.

CSX seeks approval of the proposed modification of the signal system on the signaled siding between Holland and Waverly, Milepost (MP) CG 25.3 to MP CG 24.03, on the Grand Rapids Subdivision, Chicago Division.

The modification consist of the removal of the crossover and the signals, D243 and 6L, at MP 24.5 on the signaled siding; and the installation of a crossover and Signal Nos. 2, 4, 6, and 8 at MP 24.32, creating a double crossover at Waverly. The method of operation will be changed from CSX Rule ABS 261 to CSX Rule 46, Non-Controlled Track, on the siding from MP 24.32 to MP 25.3.

The reason given for the proposed change is to improve switching movements at Waverly Yard.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200

New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 1, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on April 11, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–9126 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0020]

Notice of Product Development

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated February 17, 2012, the Union Pacific Railroad (UP) and the National Railroad Passenger Corporation (Amtrak) have provided the Federal Railroad Administration (FRA) a Notice of Product Development per 49 CFR 236.913(d)(1)(i) for the modification of the Incremental Train Control System (ITCS). FRA has assigned the petition Docket Number FRA–2012–0020.

UP, Amtrak, and the Illinois Department of Transportation (IDOT) plan to conduct demonstration high-speed passenger train operations over a portion of the corridor between Chicago, IL, and St. Louis, MO, as part of the high-speed rail (HSR) program. The demonstration segments are on UP's Joliet Subdivision, between Control Point (CP) X073 South Dwight, milepost (MP) 72.81; and CP X093 Pontiac, MP 92.48.

This modification of ITCS is in furtherance of the High-Speed Rail 2A Route Construction Agreement or the ''2A Agreement.'' High-speed passenger trains will operate up to 110 mph on UP's portion of the 2A route. UP freight trains will continue to operate at speeds not to exceed 60 mph.

The scope of the work for the 2A Agreement requires UP to design, procure, and install:

1. Cab signal fixed equipment in an initial segment between Dwight and Pontiac.

2. A train control system meeting Positive Train Control (PTC) requirements on the entire UP portion of the route, in accordance with Federal regulations.

Because the proposed system does not meet the statutory and regulatory requirements for PTC systems, and does not interoperate with the same, UP and Amtrak plan to seek FRA approval for its operation under Part 236, Subpart H.

Operation on the demonstration segment will be under the centralized traffic control rules of the General Code of Operating Rules. UP freight trains will use automatic cab signals (ACS), consistent with the operation on its other ACS territories that do not provide speed control. Amtrak passenger trains will use the speed control function of the automatic train control onboard their locomotives, which provides enforcement of speed limits associated with signal indications. UP and Amtrak are the only operators on the demonstration segment.

ITCS will provide a mechanism for safe activation of highway-grade crossing warning devices by passenger trains operating in excess of 79 mph. In addition, the two-way communications feature of ITCS allows crossing health and status information to be provided to approaching ITCS equipped trains.

A copy of the notice, as well as any written communications concerning the notice, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 1, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on April 11, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–9115 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Request for Comment

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

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted

below will be submitted to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information collection was published on September 20, 2011 (**Federal Register**/Vol. 76, No. 182/pp. 58341–58342).

DATES: Submit comments to the Office of Management and Budget (OMB) on or before May 17, 2012.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street NW., Washington, DC 20503, Attention: Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, or by email at *oira_submission@omb.eop.gov,* or fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Eric Traube at the National Highway Traffic Safety Administration, Office of Human-Vehicle Performance Research (NVS–331), Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590. Mr. Traube's phone number is 202–366–5673. His email address is *eric.traube@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Survey of Driver Attitudes and Opinions of Advanced In-vehicle Alcohol Detection Systems.

OMB Control Number: 2127–0669.

Type of Request: Revision.

Abstract: In a continuing effort to reduce the adverse consequences of alcohol-impaired driving, NHTSA in conjunction with the Automotive Coalition for Traffic Safety (ACTS) is undertaking research and development to explore the feasibility of, and public policy challenges associated with, use of in-vehicle alcohol detection technology. The agency believes that use of vehicle-based, alcohol detection technologies could help to significantly reduce the number of alcohol-impaired driving crashes, deaths and injuries by preventing drivers from driving while their blood alcohol concentration (BAC) is at or above the legal limit. In 2008, ACTS and NHTSA entered into a 5-Year Cooperative Agreement to ''explore the feasibility, the potential benefits of, and the public policy challenges associated with a more widespread use of unobtrusive technology to prevent drunk driving.'' The goal of the Driver Alcohol Detection System for Safety (DADSS) project is, through a step-by-step, data-driven process, to develop and test prototypes that may be considered for vehicle integration thereafter.

As technology development progresses and decisions are being made about best practices for integrating such technology into vehicles, NHTSA is soliciting public opinions about the proposed in-vehicle alcohol detection devices. Optimization of the effectiveness of the technology and public acceptance of it as a safety enhancement once deployed will depend on the extent to which public attitudes are taken into account during the development process. OMB previously approved focus groups with licensed drivers to provide an initial understanding of public preferences concerning advanced alcohol detection technology. In order to provide a more complete understanding of driver preferences, NHTSA is proposing to conduct a nationally representative telephone survey of drivers. Interviews would be completed with 1,000 licensed drivers randomly selected from the 50 States and the District of Columbia. The survey would be composed of both a landline sample and a smaller cell phone sample selected from separate sampling frames. The drivers would have the developing in-vehicle alcohol sensing technology systems described to them, and asked a series of questions to obtain their reactions to the systems and their possible installation in new vehicles. In conducting the telephone interviews, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. Each driver in the sample would be interviewed a single time. No information would be collected that could be used to identify any respondent.

NHTSA and ACTS will use the information from the proposed telephone survey in decision making regarding integration of the technology under investigation into a vehicle.

Affected Public: Randomly selected members of the general public ages 21 and older from across the United States will be surveyed by telephone. Participation by all respondents would be voluntary and anonymous.

Estimated Total Annual Burden: 256 hours 15 minutes (1,000 interviews plus 25 pilot interviews each averaging 15 minutes) would be added to the 288 hours previously approved for the focus groups, which would total 544 hours and 15 minutes.

Comments Are Invited on the Following

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation, including whether the information will have practical utility;

(ii) The accuracy of the Department's estimate of the burden of the proposed information collection;

(iii) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Authority: 44 U.S.C. 3506(c)(2)(A).

Issued in Washington, DC, on April 17, 2012.

John Maddox,

Associate Administrator, Vehicle Safety Research.

[FR Doc. 2012–9158 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA–2010–0002]

Agency Information Collection Activity Under OMB Review: Uniform Criteria for State Observational Surveys of Seat Belt Use

AGENCY: National Highway Traffic Safety Administration, US DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The notice of proposed rulemaking, which included a statement of the collection of information and a 60-day comment period, was published on January 28, 2009.

DATES: Comments must be submitted on or before May 17, 2012.

FOR FURTHER INFORMATION CONTACT: Jack Oates at the National Highway Traffic Safety Administration, Office of Regional Operations and Program Delivery (NTI–200), 202–366–2730, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Uniform Criteria for State Observational Surveys of Seat Belt Use.

OMB Control Number: 2127–0597.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Reinstatement with change of a previously approved collection.

Affected Public: State Governments (the 50 States, the District of Columbia, Puerto Rico and 4 territories).

Form Number: N/A.

Abstract: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59) provides that the Secretary of Transportation may not approve for Section 402 funding a State highway safety program which does not provide satisfactory assurances that the State will implement an annual statewide seat belt use survey in accordance with criteria established by the Secretary to ensure that the measurements of seat belt use are accurate and representative. In addition, in 2008, the National Highway Traffic Safety Administration (NHTSA) and the Governors Highway Safety Association (GHSA) partnered to develop a voluntary minimum set of performance measures to be used by States and federal agencies in the development and implementation of behavioral highway safety plans and programs. Included in the set as the core behavior measure is B–1, observed seat belt use for passenger vehicles, front seat outboard occupants. Since the original adoption of seat belt observational survey Uniform Criteria in 1998, NHTSA and the States have accumulated substantial experience in the design and implementation of these surveys. This experience has provided insight into factors that could affect survey accuracy and reliability. In addition, technological improvements in road inventories have made it possible to select observation sites in a more cost effective manner. For these reasons, NHTSA proposed to revise the Uniform Criteria so that future surveys will give States more accurate data to guide their occupant protection programs.

The States themselves use the information collected in their seat belt use surveys to evaluate the effectiveness of their occupant protection countermeasures programs and to identify relatively low seat belt use areas and sub-populations requiring increased program emphasis. NHTSA uses the collected information, pooled across the States, to determine the relative impact of various countermeasures and program strategies and to provide guidance to assist the States in achieving the highest possible seat belt use. NHTSA also uses the collected information from individual States to identify those whose occupant protection programs would most benefit from special management reviews, countermeasure demonstration projects and other forms of technical assistance.

The information collected for the States' seat belt observational surveys is to include a specification of the survey design, to be reassessed and, if appropriate, updated every five (5) years, or earlier if the State so desires. The survey design specification will include a description of the methodology used to select the survey observation sites, the selection probability of each site, the survey observation procedures and protocols, observer training and quality control procedures. In addition, each State annually is to submit the survey results, including, for each observation site, the number of front seat outboard occupants that were observed, the number observed to be wearing the seat belt, and the site weighting factor used to combine the individual site data into the measure of statewide seat belt use.

The notice of proposed rulemaking, which included a statement of the collection of information and a 60-day comment period, was published on January 28, 2009. See 75 FR 4509. In the preamble to the final rule published on April 1, 2011, the agency explained how the collection of information contained in the final rule responded to any comments received from the public. See 76 FR 18042. The agency also included an identification and explanation of any modifications made in the rule and why it certain comments were not adopted.

Estimated Total Annual Burden: 19,040 hours.

Estimated Number of Respondents: 56 (50 States, District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands).

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Attention NHTSA Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Mary D. Gunnels,

Associate Administrator, Regional Operations and Program Delivery.

[FR Doc. 2012–9197 Filed 4–16–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 10, 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 May 17, 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 (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 (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave., NW., Suite 8140, 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.*

Internal Revenue Service (IRS)

OMB Number: 1545–2222.

Type of Review: Revision of a currently approved collection.

Title: VITA/TCE Volunteer Program.

Forms: 8653, 8654, 14024, 14310.

Abstract: The Internal Revenue Service offers free assistance with tax return preparation and tax counseling using specially trained volunteers. The Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs assist seniors and individuals with low to moderate incomes, those with disabilities, and those for whom English is a second language.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 97.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–9144 Filed 4–16–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury 's Office of Foreign Assets Control (''OFAC'') is publishing the name of 1 individual whose property and interests in property has been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 1 individual identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on March xx, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On March xx, 2012, the Director of OFAC designated the following individual whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individual

1. OVERDICK MEJIA, Horst Walter (a.k.a. OVERDICK MEJIA, Walther; a.k.a. ''TIGRE''), KM 208, Ruta Hacia, Coban, Guatemala; DOB 31 Jul 1967; alt. DOB 31 Jul 1968; citizen Guatemala; nationality Guatemala; Identification Number 0–16 Reg 53089 (Guatemala); alt. Identification Number 0–16 89159 (Guatemala); NIT #702787–7 (individual) [SDNTK]

Dated: April 10, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–9124 Filed 4–16–12; 8:45 am]

BILLING CODE 4811–AL–P

INSTITUTE OF PEACE

Notice of Meeting

AGENCY: United States Institute of Peace.

DATE/TIME: Thursday, April 26, 2012 (9 a.m.–4 p.m.).

LOCATION: 2301 Constitution Avenue NW., Washington, DC 20037.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: April 26, 2012 Board Meeting; Approval of Minutes of the One Hundred Forty-Second Meeting (January 26, 2012) of the Board of Directors; Chairman's Report; President's Report; Update on Management, Budget and Congress; Audit and Finance Committee FY 2011 Audit Report; National Peace Essay Contest, JR Fellowship and Grants Update; Board Executive Session; Other General Issues.

FOR FURTHER INFORMATION CONTACT: Tessie F. Higgs, Executive Office, Telephone: (202) 429–3836.

Dated: April 7, 2012.

Michael B. Graham,

Senior Vice President for Management and CFO, United States Institute of Peace.

[FR Doc. 2012–8979 Filed 4–16–12; 8:45 am]

BILLING CODE 6820–AR–M

FEDERAL REGISTER

Vol. 77 Tuesday,
No. 74 April 17, 2012

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0037; FRL–9636–2]

RIN 2060–AN33

National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production. The final rules establish emission standards that apply at all times, including periods of startup, shutdown and malfunction, for hazardous air pollutants from polyvinyl chloride and copolymers production located at major and area sources. The final rules include requirements to demonstrate initial and continuous compliance with the emission standards, including monitoring provisions and recordkeeping and reporting requirements.

DATES: The final rules are effective on April 17, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of April 17, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0037. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information 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 at the EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. This Docket Facility 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 EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Jodi Howard, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–4607; Fax number: (919) 541–0246; email address: *howard.jodi@epa.gov*.

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

CAA Clean Air Act
CDD/CDF chlorinated dibenzo-dioxins and furans
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CEMS continuous emission monitoring system
CPMS continuous parameter monitoring system
DCS distributed control system
dscm dry standard cubic meter
EDC ethylene dichloride
ERT Electronic Reporting Tool
GACT generally available control technologies or management practices
HMW high molecular weight
HAP hazardous air pollutants
HCl hydrogen chloride
HON Hazardous Organic NESHAP
ICR information collection request
LAER lowest achievable emission rate
LDAR leak detection and repair
LMW low molecular weight
LOQ limit of quantitation
MACT maximum achievable control technology
MDL method detection levels
MON Miscellaneous Organic Chemical Manufacturing NESHAP
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
ng/dscm nanograms per dry standard cubic meter
NO_X nitrogen oxide
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
POD point of determination
POG point of generation
ppbv parts per billion by volume
ppbw parts per billion by weight
ppm parts per million
ppmv parts per million by volume
ppmw parts per million by weight
PQL practical quantitation limit
PRD pressure relief device
psia pounds per square inch absolute
PVC polyvinyl chloride and copolymers
PVCPU PVC production process unit
RCRA Resource Conservation and Recovery Act
RDL representative method detection level
RFA Regulatory Flexibility Act
RL reporting limit
SBREFA Small Business Regulatory Enforcement Fairness Act
SO_2 sulfur dioxide
TCEQ Texas Commission on Environmental Quality
TEQ toxic equivalent
THC total hydrocarbon
tpy tons per year
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
UPL upper predictive limit
VACO vinyl acetate copolymer
VCM vinyl chloride monomer
VCS voluntary consensus standards
VOC volatile organic compound
WWW World Wide Web

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. General Information

A. Does this action apply to me?

The final rules establish national emission standards for hazardous air pollutants (NESHAP) for polyvinyl chloride and copolymer (PVC) production. The regulated categories and entities potentially affected by these standards include the following:

Category	NAICS [a] Code	Examples of potentially regulated entities
Polyvinyl chloride resins manufacturing ...	325211	Facilities that polymerize vinyl chloride monomer to produce polyvinyl chloride and/or copolymers products.

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in 40 CFR part 63, subpart HHHHHHH (National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production) and in 40 CFR part 63, subpart DDDDDD (National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources).

A polyvinyl chloride and copolymer production facility is not subject to either subpart if it is a research and development facility, as defined in section 112(c)(7) of the Clean Air Act (CAA). If you have any questions regarding the applicability of this final action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this action will also be available on the World Wide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by June 18, 2012. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment (including any public hearing) can be raised during judicial review. This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of this rule.'' Any person seeking to make such a demonstration to the EPA should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to the contact listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel for the Air and Radiation Law Office (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Background Information for This Final Rule

A. What is the statutory authority for the final PVC rules?

Section 112(d) of the CAA requires the EPA to establish NESHAP for source categories and subcategories of both major and area sources of hazardous air pollutants (HAP) that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a HAP-emitting stationary source that is not a major source.

Section 112(d) of the CAA requires the EPA to set emissions standards for HAP emitted by major stationary sources, based on performance of the maximum achievable control technology (MACT). The MACT standards for existing sources must be at least as stringent as the average emissions limitation achieved by the best-performing 12 percent of existing sources (for which the Administrator has emissions information) or the best-performing five sources for source categories or subcategories with fewer than 30 sources (CAA section 112(d)(3)(A) and (B)). This minimum level of stringency is called the MACT floor. For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best-controlled similar source (CAA section 112(d)(3)). The EPA also must consider more stringent ''beyond-the-floor'' control options. When considering beyond-the-floor options, the EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account costs, energy and non-air

quality health and environmental impacts when doing so.

Under CAA section 112(d)(5), the EPA can promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices [GACT] by such sources to reduce emissions of hazardous air pollutants.'' Additional information on generally available control technology (GACT) is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the analogous source category to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source categories at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

Under CAA section 112(d)(6), we are required to ''review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.''

B. 2004 Vacatur and EPA's Response

On July 10, 2002, the EPA promulgated NESHAP for new and existing PVC production facilities that are located at major sources in 40 CFR part 63, subpart J (67 FR 45886, July 10, 2002) (referred to as the ''part 63 NESHAP''). In that rulemaking, the EPA determined that compliance with the existing Vinyl Chloride NESHAP (40 CFR part 61, subpart F) (referred to as the ''part 61 NESHAP'') reflected the application of MACT; thus, satisfying CAA section 112(d), with the exception of adding requirements for equipment leaks at new sources. In the part 63 NESHAP, the EPA regulated vinyl chloride emissions as a surrogate for all HAP emitted from PVC production. For equipment leaks, the part 63 NESHAP required that new sources comply with 40 CFR part 63, subpart UU, National Emission Standards for Equipment Leaks—Control Level 2 Standards.

In *Mossville Environmental Action Now* v. *EPA,* 370 F.3d 1232 (DC Cir. 2004), the petitioners argued that the EPA failed to set emission standards for all HAP emitted by PVC plants. The EPA had set emission standards for vinyl chloride as a surrogate for the remaining HAP because it was the predominant HAP used and emitted at PVC plants. The Court ruled that the EPA did not adequately explain the basis for its decision to use vinyl chloride as a surrogate for other HAP. The Court ''vacated and remanded [the rule in its entirety] to the agency for it to reconsider or properly explain its methodology for regulating [HAP] emitted in PVC production other than vinyl chloride by use of a surrogate.'' 370 F.3d at 1243. This rule promulgates NESHAP for PVC production at major sources in response to the remand and in accordance with section 112 of the CAA.

On January 23, 2007 (72 FR 2930), the EPA promulgated NESHAP for new and existing PVC production area sources in 40 CFR part 63, subpart DDDDDD. Subpart DDDDDD was based on GACT and required area sources to meet the requirements in the existing part 61 NESHAP. The part 61 NESHAP requirements address only vinyl chloride emissions. In this rulemaking, we are fulfilling our obligation under CAA section 112(d)(6) to review and revise, as necessary, the PVC production area source standards. We coordinated our CAA 112(d)(6) review of the area source standards with the development of major source MACT standards in response to the Court remand.

III. Summary of Significant Changes Since Proposal

The EPA received over 39 public comment letters on the proposed rulemaking. Furthermore, we conducted two public hearings to allow the public to comment on the proposed rulemaking. After consideration of public comments and new data received, the EPA is making several changes to the standards. Following are the major changes to the standards since the proposal. The rationale for these and other significant changes can be found in section V of this preamble or in the *National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production: Summary of Public Comments and Responses,* in the PVC docket (EPA–HQ–OAR–2002–0037).

A. Applicability

The definition of affected source was changed to clarify the requirements for existing and new affected sources. In the proposed rule, an affected source was defined as each individual PVC production process unit (PVCPU) and a new affected source was a PVCPU for which construction commenced on or after May 20, 2011, at a major or area source. A PVCPU was defined to include all equipment connected by shared piping, including equipment typically shared by multiple PVCPU, such as heat exchangers and wastewater treatment systems.

In the final rule, the existing affected source is the facility-wide collection of all PVCPU, storage vessels, surge control vessels, heat exchange systems, wastewater, and process wastewater treatment systems that are associated with producing PVC. A new affected source is defined as follows:

- All PVCPU, storage vessels, surge control vessels, heat exchange systems, wastewater and process wastewater treatment systems that are associated with producing PVC and are constructed at a Greenfield facility after May 20, 2011; or that are located at an existing facility that did not previously produce PVC prior to the rule proposal but has undergone process changes to start producing PVC.
- A reconstructed affected source.

As an example, if an existing PVC plant adds a new PVCPU, the new PVCPU and the associated emission control devices and wastewater treatment processes would be subject to the existing source NESHAP limits, unless it qualifies as a reconstructed source. A newly constructed PVCPU would be subject to the new source requirements in the final rules only if it was constructed at a Greenfield site or at a site that had not previously produced PVC prior to the date of proposal of this rule (May 20, 2011) or if it qualifies as a reconstructed source.

B. Subcategories

At proposal, we did not subcategorize process vents. In the final rule, we have established two subcategories for process vents: PVC-only and PVC-combined. PVC-only process vents comprise process vent streams that

originate solely from a PVCPU. PVC-combined process vents comprise process vent streams that originate from a PVCPU and that are combined or are co-controlled with process vent streams that originate from other source categories such as ethylene dichloride (EDC) or vinyl chloride monomer (VCM) production processes. The change to subcategories was based on our review of comments, further review of the originally submitted test data, and our review of additional data submitted by industry after proposal. We determined that there are significant differences between the emission profiles of process vents that originate solely from a PVCPU and the emission profiles of process vents that originate from a PVCPU and are combined with process vents from other source categories prior to control. Further discussion of the differences between PVC-only and PVC-combined process vent streams is provided in section V.D of this preamble, and data showing the differences is provided in the memorandum, *Revised Maximum Achievable Control Technology (MACT) Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category, which is available in the docket.*

A facility subject to the PVC-combined limits that no longer combines vent streams from other source categories, or a facility that is subject to the PVC-only limits that subsequently combines vent streams from other source categories, is subject to the process change requirements in 40 CFR 63.11896 of the final rule. Routine and maintenance shutdowns that cause temporary cessation of the vent stream flow from other source categories are not subject to the process change requirements.

At proposal, we subcategorized stripped resins into three subcategories: (1) Bulk resin, (2) dispersion resin and (3) all other resin. For the final rule, we subcategorized stripped resins into five subcategories: (1) Suspension resin, (2) dispersion resin, (3) suspension blending resin, (4) bulk resin and (5) copolymer resin. The change to subcategories was made based on our review of comments and additional data submitted by the industry (see section V.D of this preamble for more discussion of our response to these and other public comments) after proposal. We determined that there are significant differences in the concentrations of vinyl chloride and organic HAP that remain in the various types of resin following stripping due to differing process equipment and raw materials that are used to produce the varying types of resins, such that further subcategorization of stripped resin was warranted.

C. Emission Standards

In the final rule, we revised the emission limits based on additional data received and the additional subcategories for process vents and stripped resins. The emission limit changes are discussed in section V.E.2 of this preamble and documented in the technical memorandum, *Revised Maximum Achievable Control Technology (MACT) Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* which is available in the docket. We also made revisions to the requirements for process wastewater, heat exchange systems, equipment leaks and other emission sources as discussed below.

We considered all the data regarding the PVC source category available to the agency in establishing the emission limits presented in Tables 1 through 8 below for process vents, stripped resins, and process wastewater. In reviewing those data, we found that the HAP emitted from the PVC source category are organic HAP (including vinyl chloride and chlorinated dibenzo-dioxins and furans (CDD/CDF)) and hydrogen chloride (HCl). We did not identify in the data any inorganic HAP, metal HAP, or any acid gases other than HCl, which is also a surrogate for chlorine gas. In setting limits for all HAP emitted at PVC major sources, we established total hydrocarbons (THC) limits as a surrogate for organic HAP from process vents, along with limits for HCl as a surrogate for all acid gas HAP and chlorine gas, vinyl chloride, and CDD/CDF. Although vinyl chloride and CDD/CDF are organic HAP, we established separate limits for these pollutants. Vinyl chloride is the primary ingredient in PVC production and is present at all emission points. Vinyl chloride, which is also an urban HAP, is already regulated at PVC facilities under the part 61 NESHAP. However, we are not setting vinyl chloride limits as a surrogate for other HAP. The CDD/CDF emissions are generated from combustion control of organic HAP from process vents (as is HCl), and CDD/CDF are emitted at levels that are orders of magnitude lower than other organic HAP, thus requiring a separate test method to be detected and measured.

We identified in the data for stripped resins and process wastewater only organic HAP (including vinyl chloride). For these emission sources, we are establishing total non-vinyl chloride organic HAP limits. We did not establish a THC limit for stripped resins and process wastewater because the data were derived from liquid samples (as opposed to gaseous samples for process vents), and no test method is available for testing THC in liquid samples.

For heat exchange systems and equipment leaks, we are setting requirements for leak detection and repair (LDAR). For heat exchange systems, we are setting a total strippable volatile organic compounds (VOC) leak action level and an alternative vinyl chloride leak action level because if either of these pollutants is detected in the cooling water or in the stripping gas, then repair of the leak will be required and will control all HAP. For equipment leaks, we are setting only a VOC leak action level because the only currently EPA approved leak detection method is EPA Method 21, which measures VOC. Like heat exchange systems, if the VOC leak is detected, then repair of the leak will be required and result in control of all HAP. (See preamble section V.C for further discussion regarding the pollutants regulated.)

1. Process Vents

In the proposed and final rule, we calculated the MACT floor emission levels for process vents accounting for variability using a 99-percent upper predictive limit (UPL) calculation. In the final rule, we used a 99-percent UPL calculation, but we changed the value for the number of samples used in the compliance average (the m value) in the UPL calculation for THC to 3 instead of 30 to reflect the actual number of THC test runs that will comprise the compliance average.

Tables 1 and 2 of this preamble present the final process vent emission limits for existing sources and new sources, respectively, compared to the proposed limits.

TABLE 1—COMPARISON OF PROPOSED AND FINAL EMISSION LIMITS FOR PROCESS VENTS AT EXISTING MAJOR SOURCES

Pollutant	Emission limits [a]		
	Proposed	Final: PVC-only	Final: PVC-combined
Vinyl chloride	0.32 ppmv	6.0 ppmv	1.1 ppmv.
Hydrogen chloride	150 ppmv	78 ppmv	380 ppmv.
Total hydrocarbons (THC)	2.0 ppmv as propane [c]	9.7 ppmv as propane	4.2 ppmv as propane.
Total organic HAP [b]	12 ppmv	56 ppmv	9.8 ppmv.
Dioxin/furans (TEQ)	0.023 ng/dscm	0.038 ng/dscm	0.051 ng/dscm.

[a] ppmv = parts per million by volume dry at 3-percent oxygen (O_2). ng/dscm = nanograms per dry standard cubic meter at 3-percent O_2.
[b] Total organic HAP is alternative compliance limit for THC.
[c] Proposed THC compliance limit.

TABLE 2—COMPARISON OF PROPOSED AND FINAL EMISSION LIMITS FOR PROCESS VENTS AT NEW MAJOR SOURCES

Pollutant	Emission limits [a]		
	Proposed	Final: PVC-only	Final: PVC-combined
Vinyl chloride	3.2 ppbv	0.56 ppmv	0.56 ppmv.
Hydrogen chloride	0.17 ppmv	0.17 ppmv	1.4 ppmv.
Total hydrocarbons (THC)	2.0 ppmv as propane [c]	7.0 ppmv as propane	2.3 ppmv as propane.
Total organic HAP [b]	0.22 ppmv	5.5 ppmv	5.5 ppmv.
Dioxin/furans (TEQ)	0.0087 ng/dscm	0.038 ng/dscm	0.034 ng/dscm.

[a] ppmv = parts per million by volume dry at 3-percent O_2. ng/dscm = nanograms per dry standard cubic meter at 3-percent O_2.
[b] Total organic HAP is alternative compliance limit for THC.
[c] Proposed THC compliance limit.

2. Equipment Leaks

In the proposed rule, we required reciprocating pumps, reciprocating and rotating compressors and agitators to be equipped with double seals or the equivalent. In the final rule, we are also allowing affected sources to comply with the requirements for reciprocating pumps, reciprocating and rotating compressors and agitators by complying with the requirements for 40 CFR part 63, subpart UU. If double mechanical seals, or the equivalent, are not used, 40 CFR part 63, subpart UU requires pumps to be monitored monthly at a leak definition of 1,000 parts per million (ppm); agitators must be monitored monthly at a leak definition of 10,000 ppm, and compressors must either be leakless (i.e., operating with an instrument reading of less than 500 ppm above background) or be equipped with a system to capture and transport leaks through a closed vent system to a control device.

3. Stripped Resin

In the proposed rule, we calculated concentration values for HAP in the dispersion resin subcategory using the reported mass-based values (for HAP present in the resin) and the dispersion resin production for each facility. The concentration values were then used to calculate the MACT floor emission limits for dispersion resin. For the final rule, we used the original vinyl chloride and other organic HAP concentration values, as measured and analyzed, as the basis for setting the MACT floors. This change is consistent with how we set the MACT floors for the other resin subcategories and provides a more accurate basis for setting concentration-based limits.

At proposal, vinyl chloride and total HAP limits for stripped resins were calculated using a 99-percent UPL calculation based on 30 days of vinyl chloride and other HAP data from all facilities that conducted resin sampling and analysis as part of our August 21, 2009, CAA section 114 survey and testing request for the PVC industry. The vinyl chloride stripped resin limits were calculated using data obtained from resin sampling using EPA SW–846 Method 8260B.

For the final rule, vinyl chloride limits for stripped resins were calculated based on 4 years of vinyl chloride compliance data, submitted by the PVC industry after proposal, that were obtained by resin sampling using EPA Method 107. This revision was made because EPA Method 107 is a better measure than EPA SW–846 Method 8260B of the concentration of vinyl chloride in PVC resin, as explained further in section V.E of this preamble. Furthermore, because of the significantly larger dataset of vinyl chloride concentrations measured using EPA Method 107, we calculated the final stripped resin vinyl chloride limits using a percentile for the top 5 sources. Percentiles represent the specified slice of the sample data and unlike confidence and prediction intervals, they are distribution-free.

In the proposed rule, the total HAP limits for the stripped resin subcategories included the contribution from vinyl chloride. In the final rule, vinyl chloride concentrations were removed from the total organic HAP limit calculations, resulting in total non-vinyl chloride organic HAP limits for all subcategories of stripped resin. This change was made because we have established separate limits for vinyl chloride in stripped resin and we are requiring compliance with those limits using EPA Method 107. The total non-vinyl chloride organic HAP limits are based on concentration data for all measured organic HAP, excluding vinyl chloride, collected using EPA SW–846 Methods 8015C, 8260B, 8270D and 8315A. Additional discussion is provided in section V.D of this preamble and in the memorandum, *Revised Maximum Achievable Control Technology (MACT) Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* which is available in the docket.

At proposal, variability in the total HAP limits was assessed using a 99-percent UPL calculation where the m value was set at 30 to represent 30 single daily total HAP values. For the final rule, variability was assessed in the total non-vinyl chloride organic HAP limits using the 99-percent UPL calculation and an m value of 1 to represent monthly compliance, as

explained further in section V of this preamble.

For the final rule, we excluded information from several facilities from the MACT floor analysis due to the use of inconsistent test methods, inaccurate or questionable method detection levels (MDL), or lack of documentation on the sampling and analysis results. The changes made to the MACT floor calculations are discussed in section V.E.2 of this preamble.

Tables 3 through 7 of this preamble present the proposed and final stripped resin emission limits for bulk resin, dispersion resin, suspension resin, suspension blending resin and copolymer resin, respectively, at existing and new sources.

TABLE 3—COMPARISON OF PROPOSED AND FINAL EMISSION LIMITS FOR BULK RESIN AT EXISTING AND NEW MAJOR SOURCES

Source	Pollutant	Bulk resin	
		Proposed emission limits (ppmw) [a]	Final emission limits (ppmw) [a]
Existing	Vinyl Chloride	7.1	7.1
	Total Non-Vinyl Chloride Organic HAP	170	170
New	Vinyl Chloride	7.1	7.1
	Total Non-Vinyl Chloride Organic HAP	170	170

[a] At proposal, the total organic HAP limit included vinyl chloride. The final total non-vinyl chloride organic HAP limit excludes vinyl chloride.

TABLE 4—COMPARISON OF PROPOSED AND FINAL EMISSION LIMITS FOR DISPERSION STRIPPED RESIN AT EXISTING AND NEW MAJOR SOURCES

Source	Pollutant	Dispersion resin	
		Proposed emission limits (ppmw) [a]	Final emission limits (ppmw) [a]
Existing	Vinyl Chloride	55	1300
	Total Non-Vinyl Chloride Organic HAP	110	240
New	Vinyl Chloride	41	480
	Total Non-Vinyl Chloride Organic HAP	58	66

[a] At proposal, the total organic HAP limit included vinyl chloride. The final total non-vinyl chloride organic HAP limit excludes vinyl chloride.

TABLE 5—COMPARISON OF PROPOSED AND FINAL EMISSION LIMITS FOR SUSPENSION STRIPPED RESIN AT EXISTING AND NEW MAJOR SOURCES

Source	Pollutant	Suspension resin	
		Proposed emission limits (ppmw) [a b]	Final emission limits (ppmw) [a b]
Existing	Vinyl Chloride	0.48	37
	Total Non-Vinyl Chloride Organic HAP	76	670
New	Vinyl Chloride	0.20	7.3
	Total Non-Vinyl Chloride Organic HAP	42	15

[a] At proposal, suspension resin was included in the ''all other resins'' subcategory.
[b] At proposal, the total organic HAP limit included vinyl chloride. The final total non-vinyl chloride organic HAP limit excludes vinyl chloride.

TABLE 6—EMISSION LIMITS FOR SUSPENSION BLENDING STRIPPED RESIN AT EXISTING AND NEW MAJOR SOURCES

Source	Pollutant	Suspension blending resin	
		Proposed Emission limits (ppmw) [a b]	Final emission limits (ppmw) [a b]
Existing	Vinyl Chloride	0.48	140
	Total Non-Vinyl Chloride Organic HAP	76	500
New	Vinyl Chloride	0.20	140
	Total Non-Vinyl Chloride Organic HAP	42	500

[a] At proposal, suspension blending resin was included in the ''all other resins'' subcategory.
[b] At proposal, the total organic HAP limit included vinyl chloride. The final total non-vinyl chloride organic HAP limit excludes vinyl chloride.

TABLE 7—COMPARISON OF PROPOSED AND FINAL EMISSION LIMITS FOR COPOLYMER STRIPPED RESIN AT EXISTING AND NEW MAJOR SOURCES

Source	Pollutant	Copolymer resin	
		Proposed emission limits (ppmw) [a] [b]	Final emission limits (ppmw) [a] [b]
Existing	Vinyl Chloride	0.48	790
	Total Non-Vinyl Chloride Organic HAP	76	1,900
New	Vinyl Chloride	0.20	790
	Total Non-Vinyl Chloride Organic HAP	42	1,900

[a] At proposal, copolymer resins were included in the ''all other resins'' subcategory.
[b] At proposal, the total organic HAP limit included vinyl chloride. The final total non-vinyl chloride organic HAP limit excludes vinyl chloride.

4. Wastewater

In the proposed rule, the wastewater limits applied to both process wastewater and maintenance wastewater. The final rule contains vinyl chloride and total non-vinyl chloride organic HAP limits for process wastewater, and requires compliance with the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (Hazardous Organic NESHAP or HON) maintenance wastewater provisions for maintenance wastewater at affected sources. For the proposed rule, the wastewater vinyl chloride concentration limits were calculated using a 99-percent UPL calculation with an m value of 1 to represent monthly compliance. The limits were calculated based on data reported in survey responses from companies responding to our August 21, 2009, CAA section 114. For the final rule, we recalculated the monthly vinyl chloride concentration limits for process wastewater using a 99-percent UPL calculation, as described above, but the limits were calculated based on 1 year of daily sampling data provided by the industry after proposal.

In the proposed rule, total HAP emission limits were based on a beyond-the-floor option of complying with the HON flow rate and concentration limits for wastewater. The proposed total HAP limits also included vinyl chloride. For the final rule, we calculated a total non-vinyl chloride organic HAP emission limit for process wastewater instead of a total HAP limit, with compliance demonstrated on a monthly basis. The total non-vinyl chloride organic HAP limits for process wastewater are based on information and data provided by industry in response to the August 21, 2009, CAA section 114 survey, corrections to those data provided by the PVC industry during the public comment period, and supplemental resin sampling data provided during the public comment period by one PVC manufacturer.

Table 8 of this preamble presents the proposed and final emission limits for process wastewater at existing and new sources.

TABLE 8—COMPARISON OF PROPOSED AND FINAL EMISSION LIMITS FOR PROCESS WASTEWATER AT EXISTING AND NEW SOURCES

Source	Pollutant	Proposed emission limits (ppmw)	Final emission limits (ppmw)
Existing	Vinyl Chloride	Less than 10 ppmw for streams that do not require treatment, or 0.11 ppmw for streams that require treatment [a].	6.8
	Total Non-Vinyl Chloride Organic HAP.	Less than 1,000 ppmw or less than 10 liters per minute annual average flow rate for streams that do not require treatment, or the provisions of 40 CFR part 63, subpart G for streams that require treatment [b].	110
New	Vinyl Chloride	Less than 10 ppmw for streams that do not require treatment, or 0.0060 ppmw for streams that require treatment [a].	0.28
	Total Non-Vinyl Chloride Organic HAP.	Less than 1,000 ppmw or less than 10 liters per minute annual average flow rate for streams that do not require treatment, or the provisions of 40 CFR part 63, subpart G for streams that require treatment [b].	0.018

[a] At proposal, if a wastewater stream contained a vinyl chloride concentration greater than 10 ppmw at the point of generation, then treatment was required.
[b] At proposal, if a wastewater stream contained a HAP concentration (based on HAP listed in Table 9 to part 63, subpart G) less than 1,000 ppmw or an annual average flow rate less than 10 liters per minute, then treatment was not required.

5. Heat Exchange Systems

We proposed that affected sources would have the option of using the Texas Commission on Environmental Quality (TCEQ) Modified El Paso Method or EPA SW–846 Method 8021B to monitor for leaks of VOC in their heat exchange system cooling water. For new affected sources, we proposed a total strippable VOC leak action level of 2.3 parts per million by volume (ppmv) (as methane) in the stripping gas or 30 parts per billion by weight (ppbw) in the cooling water, with monitoring every 12 hours. For existing affected sources, we proposed a total strippable VOC leak action level of 2.9 ppmv (as methane) in the stripping gas or 38 ppbw in the cooling water, with monthly monitoring. Our proposed delay of repair action levels for new and existing sources were a total strippable VOC leak action level of 29 ppmv (as methane) in the stripping gas or 380 ppbw in the cooling water.

In the final rule, we are requiring monthly cooling water monitoring for

either total strippable VOC or for vinyl chloride. Total strippable VOC monitoring must be done using either the TCEQ Modified El Paso Method or EPA Method 624, and vinyl chloride monitoring must be done using EPA Method 107, as it is the established method for the PVC industry to analyze vinyl chloride concentrations in water samples. The leak action levels for new and existing sources are the same in the final rule. Furthermore, the leak action levels and delay of repair action levels are the same whether facilities monitor for strippable VOC or for vinyl chloride in the cooling water and are 50 ppbw and 500 ppbw, respectively. For total strippable VOC monitoring using the TCEQ Modified El Paso Method, the leak action level is 3.9 ppmv in the stripping gas and the delay of repair action level is 39 ppmv. Table 9 of this preamble presents the proposed and final standards for heat exchange systems at existing and new sources.

TABLE 9—COMPARISON OF PROPOSED AND FINAL STANDARDS FOR HEAT EXCHANGE SYSTEMS AT EXISTING AND NEW SOURCES

Source	Pollutant	Proposed leak action level	Proposed monitoring frequency	Final leak action level	Final monitoring frequency
Existing	Total strippable VOC	38 ppbw in cooling water or 2.9 ppmv in stripping gas.	Monthly	50 ppbw in cooling water or 3.9 ppmv in stripping gas.	Monthly.
	Vinyl chloride	NA	NA	50 ppbw in cooling water	Monthly.
New	Total strippable VOC	30 ppbw in cooling water or 2.3 ppmv in stripping gas.	Every 12 hours	50 ppbw in cooling water or 3.9 ppmv in stripping gas.	Monthly.
	Vinyl chloride	NA	NA	50 ppbw in cooling water	Monthly.

NA—not applicable.

We have clarified in the final rule that heat exchange systems that are in HAP service and that have a maximum cooling water flow rate of greater than 10 gallons per minute are required to monitor for leaks.

6. Other Emission Sources

In addition to proposing requirements for reactor opening losses in the proposed rule, we solicited comment and additional information on emissions, controls and costs of controls for gasholders. Based on our review of comments, and analysis of methods to control emissions from gasholders, the final rule requires that emissions from gasholder vents be routed back into the process or vented through a closed vent system to a control device. Affected sources must also install floating objects on gasholder water seals to reduce emissions of vinyl chloride and other HAP from those seals.

D. Initial and Continuous Compliance, and Recordkeeping and Reporting

The final rule contains several changes to the compliance, recordkeeping and reporting requirements.

1. Process Vents

At proposal, affected sources were required to conduct performance tests for process vents on an annual basis. In the final rule, performance tests must be conducted once every 5 years since the continuous parametric monitoring requirements ensure compliance on a continuous basis.

In the final rule, we have established two subcategories for process vents: PVC-only and PVC combined. As at proposal, the final rule also requires that all gaseous streams from process vents must be routed into a closed vent system and sent to a control device in order to meet the PVC-only or PVC-combined emission limits. We are also requiring that each process vent stream must be characterized by developing an emission profile. This is to ensure that process vent streams are serving a valid process purpose and are not being diluted prior to control. We expect facilities to already have inventories and previous test results available to develop their emissions profile. All of the facilities that provided information in response to the August 21, 2009, PVC CAA section 114 survey, developed emission profiles. Additionally, we are allowing the emissions profile to be based on engineering assessment or measurement. Because of these reasons, we do not anticipate additional burden from this requirement. We have also clarified the definitions for process vent, continuous process vent, batch process vent and have added a definition for miscellaneous vent. These revised and new definitions are described in more detail in section V.I of this preamble.

In the proposed rule, new affected sources were required to install and operate CDD/CDF continuous emission monitoring systems (CEMS) after the promulgation of a performance specification. New sources were also required to install and operate HCl CEMS. The requirements to install and operate CDD/CDF CEMS and HCl CEMS have been removed as requirements since the continuous parameter monitoring system (CPMS) requirements are sufficient but both CEMS remain available as options to existing and new affected sources when the specifications are promulgated.

2. Stripped Resins

In the proposed rule, affected sources were required to demonstrate compliance with the vinyl chloride limits for stripped resin using EPA SW–846 Method 8260B. In the final rule, affected sources must demonstrate compliance with the vinyl chloride stripped resin limit using EPA Method 107 because it is a better measure of the concentration of vinyl chloride in resin and was specifically developed to be used to measure vinyl chloride concentration in stripped PVC resins. The final rule requires affected sources to demonstrate compliance with a total non-vinyl chloride organic HAP limit using the combination of four EPA SW–846 Methods: 8015C, 8260B, 8270D and 8315A.

In the final rule, we have removed all requirements for continuous parametric monitoring of resin strippers. Our rationale for this is explained in detail in section V.F.3 of this preamble.

3. Wastewater

The final rule contains separate requirements for process wastewater and maintenance wastewater. For process wastewater, we removed the requirement that a wastewater stream must be treated and meet certain HON requirements if its flow rate is greater than or equal to 10 liters per minute or contains a total HAP concentration greater than 1,000 parts per million by

weight (ppmw). Instead, affected sources must initially test all untreated process wastewater streams and meet the vinyl chloride and total non-vinyl chloride organic HAP limits in the final rule prior to discharge. We have clarified the requirements for process wastewater including the requirements for determining which streams require treatment to meet the process wastewater emission limits. Consequently, we have removed the terms ''point of generation'' and ''point of determination'' from the final rule.

In the proposed rule, affected sources were required to determine the concentration of vinyl chloride and total HAP on a monthly basis for streams that did not require treatment to ensure that their HAP concentrations remained below the applicability criteria. For the final rule, affected sources are required to determine the concentration of vinyl chloride and total non-vinyl chloride organic HAP on an annual basis for streams that do not require treatment.

In the final rule, we have added a requirement that affected sources must comply with the HON maintenance wastewater compliance requirements of 40 CFR 63.105 of subpart F.

In the final rule, we have removed all requirements for continuous parametric monitoring of wastewater steam strippers. Our rationale for this is explained in detail in section V of this preamble.

4. Heat Exchange Systems

We proposed that affected sources would have the option of using the TCEQ Modified El Paso Method or EPA SW–846 Method 8021B to monitor for leaks of VOC in their heat exchange system cooling water. In the final rule, we have retained the option to monitor total strippable VOC in the stripping gas using the TCEQ Modified El Paso Method, but for cooling water monitoring, we are requiring EPA Method 624. The final rule also includes an option for facilities to monitor their cooling water for vinyl chloride using EPA Method 107. The final rule requires the same leak action level for both new and existing sources, depending on which monitoring method is used.

5. Other Emission Sources

In the final rule, we are requiring emissions from gasholder vents be routed back into the process or vented through a closed vent system to a control device meeting the compliance requirements for process vents. To minimize fugitive emissions from gasholder water seals, we are also requiring the use of floating objects on the surface of water seals. Affected sources must establish operating procedures for use of floating devices in gasholders. These operating procedures must describe how the floating objects will be maintained to ensure a reduction in fugitive emissions from the gasholder's water seal.

E. Area Source Requirements

We proposed GACT standards for PVC area sources based on the proposed MACT standards for major sources. For the final rule, we have updated our analysis of area source GACT, considering comments received, including our analysis of cost considerations. Our revised GACT analysis assesses each PVC emission point (*e.g.,* process vents, stripped resin, equipment leaks, etc.) individually, for both existing and new sources, to determine the appropriate level of control considering cost and emission reduction. The GACT analysis was conducted for the same subcategories as major sources. A discussion of the GACT analysis is presented in section V.H of this preamble.

We have determined emission limits based on the control level that area sources are currently meeting to be GACT for existing and new area sources for PVC-only process vents, PVC-combined process vents, bulk resin, suspension resin, and process and maintenance wastewater. For other resin subcategories (*i.e.,* dispersion, suspension blending and copolymer), no existing area source produces these resins. For the dispersion subcategory, we determined GACT based on the least-controlled major source control level at existing major sources in that subcategory. GACT for the suspension blending and copolymer subcategories is based on the existing major source control levels for the single facility in each subcategory from which we determined the MACT floors. For all other emission points, *i.e.,* equipment leaks, heat exchange systems and other emission sources, we have determined that GACT should be the same work practice standards being adopted as MACT for major sources. We are also adopting the same testing and monitoring requirements that apply to major sources. Major source requirements are discussed in section IV of this preamble.

F. New and Revised Definitions

Several definitions were revised and added in the final rule as a result of new subcategories and other changes. The following definitions have been revised since the proposal: Batch process vent, conservation vent, continuous process vent, grade, in HAP service, polyvinyl chloride, polyvinyl chloride and copolymers production process unit or PVCPU, polyvinyl chloride copolymer, pressure relief device (PRD), process vent, solution process, surge control vessel, treatment process, type of resin and wastewater.

The following definitions have been added in the final rule: Gasholder, heat exchanger exit line, maintenance wastewater, miscellaneous vent, polyvinyl chloride homopolymer, process wastewater, process wastewater treatment system, PVC-combined process vent, PVC-only process vent, suspension blending process, table 10 HAP, total non-vinyl chloride organic HAP and wastewater stream. The rationale for revising and adding the definitions is provided in section V.I of this preamble.

IV. Summary of the Final Rules

A. What is the affected source?

The final rules apply to owners or operators of PVCPU located at both major source and area sources of HAP emissions, as defined in 40 CFR 63.2. The subparts apply to each affected source, where the affected source is the facility wide collection of PVCPU, storage tanks, surge control vessels, heat exchange systems, wastewater and process wastewater treatment systems that are associated with producing PVC. A new affected source is one for which construction commenced after May 20, 2011, at a Greenfield facility or at an existing facility that did not previously produce PVC prior to May 20, 2011. If components of an existing affected source are replaced, such that the replacement meets the definition of reconstruction in 40 CFR 63.2 and the reconstruction commenced after May 20, 2011, then the existing source becomes a reconstructed source and is subject to the relevant standards for a new affected source. The reconstructed source must comply with the requirements for a new affected source upon initial startup of the reconstructed source, or by April 17, 2012, whichever is later.

A PVCPU is defined as a collection of process components assembled and connected by hard-piping or duct work, used to process raw materials and to manufacture polyvinyl chloride and/or polyvinyl chloride copolymers. The collection of process components includes polymerization reactors, resin stripping operations, resin blend tanks, resin centrifuges, resin dryers, resin product separators, recovery devices, reactant and raw material charge vessels and tanks, holding tanks, mixing and weighing tanks, finished resin product

loading operations, connected ducts and piping, combustion, recovery, or recapture devices or systems and equipment (*i.e.,* all pumps, compressors, agitators, PRD, sampling connection systems, open-ended valves or lines, valves, connectors and instrumentation systems that are associated with the PVCPU). A PVCPU does not include chemical manufacturing process units, as defined in 40 CFR 63.101, which produce VCM or other raw materials used in the production of PVC.

B. When must I comply with the major and area source standards?

Existing major affected sources are required to comply with 40 CFR part 63, subpart HHHHHHH and existing area affected sources are required to comply with 40 CFR part 63, subpart DDDDDD no later than April 17, 2015. New major and area affected sources are required to comply on April 17, 2012, or upon startup, whichever is later.

C. What is the relationship between this final rule for major sources and the 40 CFR part 61, subpart F standards?

Affected sources are currently subject to requirements in the part 61 NESHAP. This final rule includes requirements that are at least as stringent as the requirements in the part 61 NESHAP. Thus, once an affected source is in compliance with 40 CFR part 63, subpart HHHHHHH, the requirements of the part 61 NESHAP will no longer apply.

D. Are there subcategories for major sources?

The final rule contains two subcategories for process vents. The process vent subcategories are based on whether the vent streams are collected from: (1) Only PVC production processes (*i.e.,* PVC-only process vents) or (2) PVC production process and other non-PVC production processes, such as VCM or EDC manufacturing (*i.e.,* PVC-combined process vents).

The final rule contains five subcategories for limits on the amount of HAP remaining in resin following polymerization and stripping (*i.e.,* the stripped resin). The stripped resin subcategories are based on the type of resin produced, and include the following homopolymer resins: (1) Bulk resin, (2) dispersion resin, (3) suspension blending resin and (4) suspension resin. A fifth subcategory is included in the final rule for all copolymer resins.

See section V.D of this preamble for more discussion on subcategories.

E. What emission standards must I meet for major sources?

This rule establishes requirements for affected sources located at or part of a major source of HAP emissions. We explain our rationale for the finalized standards in section V.E of this preamble.

1. Storage Vessels and Handling Operations

Under 40 CFR 63.11910 and Table 3 of the final rule, if you own or operate a storage vessel at a new or existing affected source, we are requiring that material stored with a maximum true vapor pressure of greater than 11.1 pounds per square inch absolute (psia) be stored in pressure vessels with no emissions to the atmosphere. During those times when purging is required or when the pressure vessel is being loaded, the purged stream or the emission stream during loading is required to be routed to a closed vent system and control device. The closed vent system and control device must meet the requirements specified in 40 CFR 63.11925 through 40 CFR 63.11950 of the final rule. You are also required to equip all openings in the pressure vessel with closure devices that are designed to operate with no detectable emissions, as determined using procedures specified in 40 CFR 63.11910(c)(3) of the final rule.

For storage vessels with a capacity greater than or equal to 40,000 gallons that store material with a maximum true vapor pressure greater than or equal to 0.75 psia or storage vessels with a capacity greater than or equal to 20,000 gallons (but less than 40,000 gallons) that store materials with a maximum true vapor pressure greater than or equal to 4 psia, we are requiring compliance with one of two equivalent compliance options. We are requiring that material be stored in either: (1) A floating roof tank meeting the operating, inspection and maintenance requirements of 40 CFR part 63, subpart WW, or (2) a fixed roof storage vessel that routes vent streams to a closed vent system and control device (meeting the requirements of 40 CFR 63.11925 through 40 CFR 63.11950 of the final rule) capable of reducing inlet VOC emissions by 95 percent or greater.

We are requiring that all other storage vessels meet the operating, inspection and maintenance requirements for fixed roof vessels of 40 CFR 63.11910(a) of the final rule or comply with either the controlled fixed roof or floating roof requirements discussed previously. 40 CFR 63.11910(a)(1)(ii) and 40 CFR 63.11910(a)(3)(i) of the final rule include requirements to equip each opening in the roof with a closure device, and to perform initial and annual inspections and repair any defects found within the specified time period. Defects include, but are not limited to, visible cracks, holes, gaps or other open spaces in the closure device or between the perimeter of the opening and the closure device; broken, cracked or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps or other closure devices.

2. Equipment Leaks

In 40 CFR 63.11915 of the final rule, we are requiring that existing and new affected sources comply with the LDAR program requirements of the National Emission Standards for Equipment Leaks—Control Level 2 Standards, subpart UU of 40 CFR part 63. For valves in gas and light liquid service, subpart UU specifies a leak definition of 500 ppm VOC and a monitoring frequency that is dependent upon the number of leaking valves. Subpart UU also requires equipment specifications to prevent leaks for other pieces of equipment. We are requiring that a vinyl chloride monitoring system be operated for detection of major leaks and identification of the general area of the plant where a leak is located. A vinyl chloride monitoring system is a device that obtains air samples from one or more points continuously and analyzes the samples with gas chromatography, infrared spectrophotometry, flame ion detection or an equivalent or alternate method.

In 40 CFR 63.11915 of the final rule, we are also requiring that, in addition to operating with no detectable emissions, there be no discharge to the atmosphere from any PRD on any equipment in HAP service within the PVC affected source. We are requiring that, upon a discharge to the atmosphere from the PRD, that the monitoring requirements specified in 40 CFR part 63, subpart UU for pressure releases from PRD be followed.

3. Heat Exchange Systems

In 40 CFR 63.11920 of the final rule, we are requiring that you implement a LDAR program to detect leaks of HAP into cooling water. For both new and existing sources, we are requiring monthly monitoring for both closed loop and once-through heat exchange systems using either the TCEQ Modified El Paso Method, EPA Method 624 or EPA Method 107. The leak action level is 50 ppbw of total strippable VOC or vinyl chloride in the cooling water, or a leak action level of 3.9 ppmv in the stripping gas. The delay of repair action

level for both new and existing sources is 500 ppbw of total strippable VOC or vinyl chloride in the cooling water, or 39 ppmv of VOC in the stripping gas. When a leak is identified, additional monitoring must be performed to isolate the source of the leak. If the total strippable VOC or vinyl chloride concentration remains below the applicable leak action level throughout the period of additional monitoring, then repairs are not required; otherwise, repairs must be completed within 45 days of identifying the leak. Repairs may be delayed if the concentration of total strippable VOC or vinyl chloride in the cooling water remains below the delay of repair action level and either: (1) It is technically infeasible to repair the leak without a shutdown, or (2) the necessary equipment, parts or personnel are not available.

4. Process Vents

In 40 CFR 63.11925 of the final rule, we are requiring all process vents be routed to a closed vent system and control device meeting the emission standards in Table 10 of this preamble. All process vents must meet the emission standards, including continuous process vents, batch process vents and miscellaneous vents.

We are requiring the emission limitations presented in Table 10 of this preamble for two subcategories of process vents at major sources: (1) PVC-only process vents and (2) PVC-combined process vents. These emission limits apply at all times.

TABLE 10—EMISSION LIMITS FOR PROCESS VENTS AT EXISTING AND NEW MAJOR SOURCES

Subcategory	Pollutant	Emission limitations [a]	
		Existing sources	New sources
PVC-only process vents	Vinyl chloride	6.0 ppmv	0.56 ppmv.
	Hydrogen chloride	78 ppmv	0.17 ppmv.
	Total hydrocarbons (THC) [b]	9.7 ppmv as propane	7.0 ppmv as propane.
	Total organic HAP [b]	56 ppmv	5.5 ppmv.
	Dioxin/Furans (TEQ)	0.038 ng/dscm	0.038 ng/dscm.
PVC-combined process vents	Vinyl chloride	1.1 ppmv	0.56 ppmv.
	Hydrogen chloride	380 ppmv	1.4 ppmv.
	Total hydrocarbons (THC) [b]	4.2 ppmv as propane	2.3 ppmv as propane.
	Total organic HAP [b]	9.8 ppmv	5.5 ppmv.
	Dioxin/Furans (TEQ)	0.051 ng/dscm	0.034 ng/dscm.

[a] ppbv = parts per billion by volume dry at 3-percent oxygen (O_2). ppmv = parts per million by volume dry at 3-percent O_2. ng/dscm = nanograms per dry standard cubic meter at 3-percent O_2.
[b] Total organic HAP is an alternative compliance limit for THC.

5. Other Emission Sources

Other emission sources include reactor and other component opening losses and gasholders. When reactors or other components (including pre-polymerization reactors used in the manufacture of bulk resin) are opened for cleaning, we are requiring in 40 CFR 63.11955 of the final rule that emissions be minimized prior to opening. We are requiring that emissions from opening a polymerization reactor must not exceed 0.04 pound vinyl chloride/ton of polyvinyl chloride product where the product means the gross product of pre-polymerization and post-polymerization. We are requiring emissions from opening of process components for any reason be minimized by reducing the volume of vinyl chloride to an amount that occupies a volume of no more than 2.0 percent of the component's containment volume or 25 gallons, whichever is larger, at standard temperature and pressure. Any vinyl chloride emissions resulting from opening equipment must be ducted through a closed vent system to a control device meeting the process vent limits of the final rule. The outlet of the control device must meet the emission limitations for process vents discussed in section IV.E.4 of this preamble.

In 40 CFR 63.11955 of the final rule, we are requiring that emissions from gasholders must either be routed back into the process or be vented to a closed vent system and control device from which the exhaust gases do not exceed the process vent limits. To minimize fugitive emissions from gasholder water seals, we are also requiring the use of floating objects on the surface of the water seal. Each gasholder must operate with one or more types of objects installed on the surface of the water seal to reduce emissions from those seals, including floating balls, hollow floating disks, an oil layer and/or floating mats.

6. Stripped Resin

In 40 CFR 63.11960 of the final rule, we are setting emission limits for vinyl chloride and total non-vinyl chloride organic HAP for five subcategories of stripped resins, as presented in Tables 11 and 12 of this preamble. The limits were developed for new and existing affected sources, based on the type of resin produced. Subcategories for homopolymer resins are: (1) Bulk resin, (2) dispersion resin, (3) suspension blending resin and (4) suspension resin. A fifth subcategory is included in the final rule for copolymer resin. These emission limits would apply at all times.

TABLE 11—LIMITS FOR STRIPPED RESINS AT EXISTING MAJOR SOURCES

Pollutant	Emission limits (ppmw)				
	Homopolymer resins				Copolymer resin
	Bulk resin	Dispersion resin	Suspension resin	Suspension blending resin	
Vinyl chloride	7.1	1,300	37	140	790

TABLE 11—LIMITS FOR STRIPPED RESINS AT EXISTING MAJOR SOURCES—Continued

Pollutant	Emission limits (ppmw)				
	Homopolymer resins				Copolymer resin
	Bulk resin	Dispersion resin	Suspension resin	Suspension blending resin	
Total non-vinyl chloride organic HAP	170	240	670	500	1,900

TABLE 12—LIMITS FOR STRIPPED RESINS AT NEW MAJOR SOURCES

Pollutant	Emission limits (ppmw)				
	Homopolymer resins				Copolymer resin
	Bulk resin	Dispersion resin	Suspension resin	Suspension blending resin	
Vinyl chloride	7.1	480	7.3	140	790
Total non-vinyl chloride organic HAP	170	66	15	500	1,900

7. Wastewater

In 40 CFR 63.11965 of the final rule, we are requiring process wastewater streams at existing sources to meet emission limits of 6.8 ppmw for vinyl chloride and 110 ppmw for total non-vinyl chloride organic HAP before being exposed to the atmosphere, discharged from the affected source or discharged from the affected source untreated as wastewater. Process wastewater streams at new sources are required to meet emission limits of 0.28 ppmw for vinyl chloride and 0.018 ppmw for total non-vinyl chloride organic HAP before being exposed to the atmosphere, discharged from the affected source or discharged from the affected source untreated as wastewater. Pollutant concentrations in each process wastewater stream at existing and new sources must be measured immediately as the process wastewater stream leaves a process component, before being exposed to the atmosphere and before mixing with any other wastewater stream.

The final rule contains separate requirements for maintenance wastewater. Maintenance wastewater must meet the requirements of 40 CFR 63.105.

F. What are the initial and continuous compliance requirements for major sources?

In 40 CFR 63.11896 of the final rule, we are requiring that, if you make a process change to an existing affected source that does not meet the criteria to become a reconstructed affected source in 40 CFR 63.11870(e) of the final rule, you must be in compliance for any added or changed emission points by the compliance date for existing affected sources. If the process change occurs after the compliance date for existing sources, then the added or changed emissions point must be in compliance upon startup. If the process change results in a change in the characteristics of any emission point such that a different emission standard or operating parameter limit applies, we are requiring that you demonstrate that the changed emission point complies with the applicable requirements for an existing affected source. You must demonstrate compliance with any emission limits and establish applicable operating limits by 180 days after the compliance date for existing affected sources; if the startup of the changed emission point occurs after the compliance date for existing affected sources, then you must demonstrate compliance with any emission limits and establish applicable operating limits by 180 days after the date of initial startup of the changed emission point.

We are also requiring that, if you make a process change to a new affected source, you demonstrate that any added emission points are in compliance with the applicable standards for a new affected source by startup of the changed emission point. You must also demonstrate initial compliance with any emission limits and establish applicable operating limits by 180 days after the date of initial startup of the changed process unit.

If you make a process change that adds or changes emission points, we are requiring that you demonstrate continuous compliance with your emission standards and operating limits according to the procedures and frequency in 40 CFR 63.11910 through 40 CFR 63.11980 of this final rule and submit a notification report specified in 40 CFR 63.11985 of the final rule.

A facility subject to the PVC-combined process vent limits that no longer combines process vent streams from other source categories, or a facility that is subject to the PVC-only process vent limits that subsequently combines process vent streams from other source categories, is subject to the process change requirements in 40 CFR 63.11896 of the final rule. Routine and maintenance shutdowns that cause temporary cessation of the vent stream flow from other source categories are not subject to the process change requirements.

1. What are the initial and continuous compliance requirements for storage vessels?

For each floating roof storage vessel, we are requiring that you meet the operating, inspection, repair and maintenance requirements of 40 CFR part 63, subpart WW. For each fixed roof storage tank venting through a closed vent system to a control device achieving 95-percent reduction in total HAP emissions, we are requiring that you meet the requirements for closed vent systems and control devices in 40 CFR 63.11925 of the final rule and summarized in section IV.F.4 of this preamble.

In 40 CFR 63.11910 of the final rule, we are also requiring that, for each fixed roof tank, you install and maintain the tank with no visible cracks, holes or other open spaces between roof section joints or between the interface of the roof edge and the tank wall. We are also requiring that you install closure devices that you secure in the closed position except during periods when you need to have access to the interior of the fixed roof tank. The closure device may be opened during the period

needed to provide access. The fixed roof tank and its closure device are required to be inspected initially and at least once per year. The inspection requirements are not applicable to parts of the fixed roof that are determined to be unsafe to inspect if you document and explain why it is unsafe to inspect and develop a plan to conduct inspections when the tank is not in service. A first attempt to repair defects must be made no later than 5 calendar days after detection and repairs are required to be completed no later than 45 days after detection, except as specified in 40 CFR 63.11910(a)(4)(ii) of the final rule.

In 40 CFR 63.11910 of the final rule, for pressure vessels, we are requiring that all potential leak interfaces in the pressure vessel be monitored for leaks annually and repaired following the procedures of 40 CFR 63.11915 of the final rule.

2. What are the initial and continuous compliance requirements for equipment leaks?

For each applicable piece of equipment (*e.g.,* valves, connectors) associated with your affected source, we are requiring that you meet the LDAR requirements of 40 CFR part 63, subpart UU. In 40 CFR 63.11915 of the final rule, you are required to install a release indicator on each PRD that would be able to identify and record the time and duration of each pressure release and notify operators that a pressure release has occurred.

3. What are the initial and continuous compliance requirements for heat exchange systems?

We are requiring that, for each affected source, you must operate a heat exchange system monitoring program, as specified in the final rule. Under the compliance requirements for heat exchange systems in 40 CFR 63.11920 of the final rule, an affected source is required to conduct sampling and analyses for either total strippable VOC using the TCEQ Modified El Paso Method or EPA Method 624, or for vinyl chloride using EPA Method 107. Affected sources must monitor no less frequently than monthly and fix any leaks detected. We are requiring different sampling locations for once-through and closed loop heat exchange systems, as specified in 40 CFR 63.11920 of the final rule. For once-through systems only, you may monitor at the cooling tower return line prior to exposure to the air or you may monitor the inlet water feed line prior to any heat exchange. If multiple heat exchange systems use the same water feed (*i.e.,* inlet water from the same primary water source), you may monitor at one representative location and use the monitoring results for that sampling location for all heat exchange systems that use that same water feed. For once-through systems, you must monitor selected heat exchanger exit line(s) so that each heat exchanger or group of heat exchangers within a system is covered by the selected monitoring location. Monitoring of selected heat exchanger exit lines is also a monitoring option for closed loop systems.

We are exempting a heat exchange system from the monitoring requirements in 40 CFR 63.11920 if all heat exchangers within the heat exchange system operate with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side, the heat exchange system does not contain any heat exchangers that are in HAP service, or the heat exchange system has a maximum cooling water flow rate of 10 gallons per minute or less.

Identified leaks must be repaired as soon as practicable, but within 45 days after identifying the leak. We are allowing delay of repair as long as the total strippable VOC concentration is below 39 ppmv in the stripping gas or below 500 ppbw in the cooling water, or the vinyl chloride concentration in the cooling water is below 500 ppbw and other criteria are met. Specifically, leaking heat exchanger repairs may be delayed if the repair is technically infeasible without a shutdown or the necessary equipment, parts or personnel are not available. To delay repairs in either case, the total strippable VOC or vinyl chloride concentration must initially be, and remain less than, the delay of repair action level for all monitoring periods during the delay of repair.

4. What are the initial and continuous compliance requirements for process vents?

To demonstrate compliance for process vents, you are required to meet the requirements of final 40 CFR 63.11930 for each closed vent system that routes emissions from process vents to a control device. You are required to meet the initial and continuous compliance requirements for process vents specified in 40 CFR 63.11925 and 40 CFR 63.11935, the monitoring requirements for your process vent control device, as specified in 40 CFR 63.11940 and the performance testing requirements for process vents in 40 CFR 60.11945. You may not use a flare to comply with the emission limits of the final rule, as specified in 40 CFR 63.11925(b).

As specified in 40 CFR 63.11925(g), affected sources are required to characterize their process vents by developing an emission profile that describes the characteristics of the process vent stream under either absolute or hypothetical worst-case conditions. In 40 CFR 63.11950, we have provided equations to develop the emissions profile for each batch process vent, including equations for vapor displacement, gas sweep of a partially filled vessel, heating, depressurization, vacuum systems, gas evolution, air drying and purging. All other emissions or emissions episodes for the emissions profile would be determined through an engineering assessment or through testing approved by the Administrator. See 40 CFR 63.11950(i) of the final rule.

Closed vent systems. In 40 CFR 63.11930 of the final rule, for closed vent systems, you are required to meet specified design requirements and install flow indicators in the bypass lines or meet other requirements to prevent and detect bypass of the control device. You must also follow the inspection, leak monitoring and repair requirements in 40 CFR 63.11930 of the final rule for closed vent systems. Closed vent systems in vacuum service are required to install alarms rather than performing leak inspection and monitoring. If you operate a closed vent system in vacuum service, you are not required to comply with the other closed vent system requirements in the final rule.

Performance testing, continuous parameter monitoring system (CPMS) and continuous emission monitoring system (CEMS) requirements for process vents and associated control devices. Compliance is demonstrated through a combination of performance testing (as specified in 40 CFR 63.11925 and 40 CFR 63.11945) and/or monitoring using CPMS and/or CEMS that measure process vent control device operating parameters (as specified in 40 CFR 63.11925, 40 CFR 63.11935 and 40 CFR 63.11940). These sections also refer to Tables 1, 2, 5, 7 and 8 of the final rule for emission limits, testing methods and requirements. Below, we summarize the process vent testing and compliance requirements by pollutant. Each performance test must consist of three test runs.

We are requiring that existing and new sources demonstrate initial compliance with the THC emission limits in Table 1 or 2 of the final rule by measuring THC at the outlet of the control device using EPA Method 25A, as specified in Table 8 of the final rule.

The minimum test run duration would be 1 hour. To demonstrate continuous compliance with the THC emission limits, each control device must be tested once every 5 years using EPA Method 25A. Alternatively, existing and new sources may demonstrate initial compliance with the total organic HAP emission limits in Table 1 or 2 of the final rule by measuring total organic HAP at the outlet of the control device using EPA Method 18 and EPA Method 320. To demonstrate continuous compliance with the total organic HAP emission limits, each control device must be tested once every 5 years using EPA Method 18 and EPA Method 320.

During the initial compliance test, you are required to establish values for the control device operating parameters specified in 40 CFR 63.11935 and 40 CFR 63.11940 (*e.g.,* oxidizer temperature). You would then use a CPMS to continuously monitor that parameter to demonstrate continuous compliance with either the THC or total organic HAP limits. New and existing sources could elect to use THC CEMS instead of establishing operating limits and using CPMS to demonstrate continuous compliance for THC emission limits. All CEMS must meet the applicable performance specifications, procedures and other calibration, accuracy and operating and maintenance requirements, as specified in 40 CFR 63.11935 of the final rule.

For vinyl chloride, you are required to demonstrate compliance by conducting an initial performance test using EPA Method 18. To demonstrate continuous compliance with the vinyl chloride emission limits, each control device must be tested once every 5 years using EPA Method 18.

For CDD/CDF, you demonstrate initial compliance by conducting a performance test using EPA Method 23 and continuous compliance by conducting performance tests using EPA Method 23 once every 5 years. The minimum sampling volume collected is 5 cubic meters for EPA Method 23. For HCl, you must demonstrate compliance by conducting an initial performance test using EPA Method 26 or 26A. The minimum sampling volumes collected is 60 liters for EPA Method 26 or 1 cubic meter for EPA Method 26A. Additionally, you are required to establish operating parameters during the initial performance test and use CPMS to continuously monitor those parameters. New and existing sources are no longer required to use CEMS but have the option of using HCl and/or CDD/CDF CEMS instead of conducting continuous parametric monitoring which is sufficient to demonstrate continuous compliance, as provided in 40 CFR 63.11925 of the final rule. All CEMS must meet the applicable performance specifications, procedures and other calibration, accuracy and operating and maintenance requirements, as specified in 40 CFR 63.11935 of the final rule.

The final rule includes specific performance testing requirements, including the process operating conditions under which performance tests should be conducted, for continuous process vents and batch operations, as provided in 40 CFR 63.11945, and discussed in sections IV.F and IV.G of this preamble.

All CPMS are required to have data averaging periods of 3-hour block averages. All CPMS are required to meet minimum accuracy and calibration frequency requirements, as specified in 40 CFR 63.11935 and Table 7 of the final rule. For each monitored parameter, you must establish a minimum, maximum or a range that indicates proper operation of the control device, as specified in 40 CFR 63.11935(d). The final rule specifies the parameters that would be monitored for each type of control device, including each oxidizer, absorber, adsorber, condenser or other control device. You must also install a flow indicator at the inlet of the control device to indicate periods of no flow to the control device.

Some control devices are subject to additional emission point-specific performance testing requirements, as described in 40 CFR 63.11945 of the final rule. We have included specific performance testing requirements for continuous process vents and batch operations, as provided in 40 CFR 63.11945 of the final rule and discussed in sections IV.F and IV.G of this preamble.

5. What are the initial and continuous compliance requirements for wastewater?

As specified in 40 CFR 63.11965(b) of the final rule, we are requiring that you conduct an initial test for process wastewater streams from the affected source to determine the vinyl chloride and the total non-vinyl chloride organic HAP concentrations. You are required to use EPA Method 107 for measuring vinyl chloride and EPA SW–846 Methods 8015C, 8260B, 8270D and 8315A for measuring total non-vinyl chloride organic HAP. For process wastewater streams that are not being treated, we are requiring that you determine which of those process wastewater streams, if any, require treatment in order to meet the wastewater emission limits. You must collect one grab sample immediately as the process wastewater stream leaves a process component and before mixing with any other wastewater stream and before being exposed to the atmosphere, discharged to a wastewater treatment process or discharged untreated as wastewater.

If your process wastewater stream contains vinyl chloride concentrations greater than or equal to 6.8 ppmw at existing sources or 0.28 ppmw at new sources or total non-vinyl chloride organic HAP concentrations greater than or equal to 110 ppmw at existing sources or 0.018 ppmw at new sources, you are required to treat the wastewater stream to achieve concentrations below these levels. We are requiring that you measure at the outlet of the treatment system by collecting one grab sample each month.

In the final rule, affected sources must comply with the requirements of 40 CFR 63.105 for maintenance wastewater streams.

For more information on the wastewater compliance requirements, see 40 CFR 63.11965, 40 CFR 63.11970 and 40 CFR 63.11975 of the final rule.

6. What are the initial and continuous compliance requirements for stripped resins?

In 40 CFR 63.11960 of the final rule, we are requiring that you conduct initial performance tests to demonstrate compliance with the vinyl chloride and total non-vinyl chloride organic HAP limits for stripped resins. We are also requiring that you conduct daily sampling and testing to demonstrate continuous compliance with the vinyl chloride limit and monthly sampling and testing to demonstrate continuous compliance with the total non-vinyl chloride organic HAP limit. The tests must be conducted at the outlet of the resin stripper for continuous processes and immediately after stripping for batch processes. You are required to use EPA Method 107 for measuring vinyl chloride and EPA SW–846 Methods 8015C, 8260B, 8270D and 8315A for measuring total non-vinyl chloride organic HAP listed in Table 10 of the final rule.

To demonstrate initial compliance with the vinyl chloride and total non-vinyl chloride organic HAP limits, you are required to collect one grab sample every 8 hours for a single grade or one grab sample per grade of PVC resin produced, whichever is more frequent, for each resin stripper over a 24-hour period. You are required to collect samples over a 24-hour period that reflects the primary product being produced, based on total mass of resin

produced in the preceding 12 months. Grade is defined in 40 CFR 63.12005 of the final rule.

To demonstrate continuous compliance with the vinyl chloride limit for a continuous process, you are required to collect one grab sample from each resin stripper every 8 hours for a single grade or one grab sample per grade of PVC resin produced, whichever is more frequent. To demonstrate compliance with the vinyl chloride limit for a batch process, you are required to collect one grab sample from each batch of resin produced. You must demonstrate compliance on a daily basis using a 24-hour grade-weighted average concentration, based on production.

To demonstrate continuous compliance with the total non-vinyl chloride organic HAP limits for a continuous process, on a monthly basis, you are required to collect one grab sample every 8 hours for a single grade or per grade of PVC resin produced, whichever is more frequent from each resin stripper over a single 24-hour period. The 24-hour arithmetic average total non-vinyl chloride organic HAP concentration for each stripper for each resin grade produced during the 24-hour sampling period must be calculated using the individual HAP concentrations measured for the grab.

To demonstrate continuous compliance with the total non-vinyl chloride organic HAP limits for a batch process, on a monthly basis, you are required to collect one grab sample for each batch of resin produced over a 24-hour period. You must demonstrate compliance on a monthly basis.

7. What are the initial and continuous compliance requirements for other emission sources?

To demonstrate compliance with the requirements for other emission sources, we are requiring that prior to opening reactors and other components, you follow the initial and continuous compliance requirements of 40 CFR 63.11955. In 40 CFR 63.11955 of the final rule, we are requiring that each gasholder must either be routed back into the process or be vented to a closed vent system and control device meeting the requirements of 40 CFR 63.11925 through 63.11950. To minimize fugitive emissions from gasholder water seals, we are also requiring the use of floating objects on the surface of the water seal. Affected sources must establish operating procedures for use of floating devices in gasholders. These operating procedures must describe how the floating objects will be maintained to ensure a reduction in fugitive emissions from the gasholder's water seal.

G. What are the performance testing requirements for batch process operations at major sources?

For batch process operations, performance tests must be conducted under the most challenging conditions that you run your batch process operations to ensure that the control device(s) is/are operating at the level needed for compliance under all conditions. Subsequent to the initial compliance test, continuous monitoring of operating parameters established during the initial test is the measure of continuous compliance with the efficiency requirement under all conditions.

H. What are the notification, recordkeeping and reporting requirements at major sources?

1. Notifications and Reports

All new and existing sources are required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 4 of the final 40 CFR part 63, subpart HHHHHHH. The General Provisions include specific requirements for notifications, recordkeeping and reporting. Reports include notifications of initial startup, initial notification, notification of compliance status, compliance reports, notification of performance test, notification of inspection, batch pre-compliance report and other notifications and reports specified in the final 40 CFR 63.11985.

The notification of compliance status report required by 40 CFR 63.9(h) must include certifications of compliance with rule requirements.

The excess emissions and continuous system performance report and summary report required by 40 CFR 63.10(e)(3) of the NESHAP General Provisions (referred to in the rule as a compliance report) are required to be submitted semi-annually for reporting periods during which there was: An exceedance of any emission limit or a monitored parameter; a deviation from any of the requirements in the rule; or if any process changes occurred and compliance certifications were reevaluated. The final rule includes additional requirements for what you must include in these reports for each type of emission point. See 40 CFR 63.11985 of the final rule.

2. Recordkeeping

The final rule requires compiling and retaining records to demonstrate compliance with each emission standard. These recordkeeping requirements are specified either directly in the final rule, in the General Provisions to 40 CFR part 63 and in 40 CFR part 63, subparts F, UU and WW. Records that we are requiring that you keep include performance tests, records of CPMS and CEMS, records of malfunctions, records of deviations, records specific to each emission point and other records specified in 40 CFR 63.11990. The 40 CFR part 63 General Provisions requirements that apply are listed in Table 4 of the final rule. We are requiring that records be kept for 5 years in a form suitable and readily available for EPA review. We are requiring that records be kept on site for 2 years; you may keep the records off site for the remaining 3 years. See 40 CFR 63.11990 of the final rule.

I. What are the requirements for area sources?

We are revising the existing NESHAP for PVC production area sources (40 CFR part 63, subpart DDDDDD), based on the results of our GACT analysis, as explained in section V.H of this preamble. The final rule subcategorizes process vents and stripped resin at existing and new area sources in the same manner as major sources. All new and existing sources are required to comply with requirements of the General Provisions (40 CFR part 63, subpart A), are identified in Table 4 of the final 40 CFR part 63, subpart DDDDDD. The final rule contains the same notification, reporting and recordkeeping requirements for area sources as for major sources. In the final rule, performance testing requirements at batch operations as well as process change requirements, discussed in sections IV.G and IV.F of this preamble, respectively, are the same for PVC area sources as for major sources. The final rule requires area sources to meet the following requirements:

1. Storage Vessels and Handling Operations

Storage vessel and handling operations at existing and new PVC area sources are subject to the same standards and compliance requirements as major sources, as discussed in sections IV.E.1 and IV.F.1 of this preamble.

2. Equipment Leaks

Equipment leaks at existing and new PVC area sources are subject to the same standards and compliance requirements as major sources, as discussed in sections IV.E.2 and IV.F.2 of this preamble.

3. Heat Exchange Systems

Heat exchange systems at existing and new PVC area sources are subject to the same standards and compliance requirements as major sources, as discussed in sections IV.E.3 and IV.F.3 of this preamble.

4. Process Vents

PVC-only process vents and PVC-combined process vents from existing and new PVC area sources are subject to the emission limits summarized in Table 13 of this preamble. They are also subject to the same requirements as major sources for demonstrating compliance (*e.g.,* continuous parametric monitoring, performance tests, test methods, etc.), as discussed in section IV.F.4 of this preamble.

TABLE 13—EMISSION LIMITS FOR PROCESS VENTS AT EXISTING AND NEW AREA SOURCES

Subcategory	Pollutant	Emission limits [a]	
		Existing sources	New sources
PVC-only process vents	Vinyl chloride	5.3 ppmv	5.3 ppmv.
	Total hydrocarbons (THC) [b]	46 ppmv as propane	46 ppmv as propane.
	Total organic HAP [b]	140 ppmv	140 ppmv.
	Dioxin/Furans (TEQ)	0.13 ng/dscm	0.13 ng/dscm.
PVC-combined process vents	Vinyl chloride	0.56 ppmv	0.56 ppmv.
	Total hydrocarbons (THC) [b]	2.3 ppmv as propane	2.3 ppmv as propane.
	Total organic HAP	29 ppmv	29 ppmv.
	Dioxin/Furans (TEQ)	0.076 ng/dscm	0.076 ng/dscm.

[a] ppmv = parts per million by volume dry at 3-percent oxygen (O_2).
ng/dscm = nanograms per dry standard cubic meter at 3-percent O_2.
[b] Total organic HAP is an alternative compliance limit for THC.

5. Other Emission Sources

Other emission sources include reactor and other component opening losses and gasholders. These emission sources at existing and new PVC area sources are subject to the same standards and compliance requirements as major sources, as discussed in section IV.E.5 and IV.F.7 of this preamble.

6. Stripped Resins

Stripped resins at new and existing area sources are subject to the emission limits summarized in Table 14 of this preamble. They are also subject to the same compliance requirements as major sources, as discussed in sections IV.E.6 and IV.F.6 of this preamble. The two existing area sources produce bulk and suspension resins and we have established GACT limits for those resin subcategories based on data for the two area sources. However, as discussed in section V of this preamble, existing major sources may have the potential to become synthetic area sources by taking federally enforceable permit limits before the first substantive compliance date of this rule. Therefore, we are also setting existing area source limits for dispersion resin, suspension blending resin and copolymer resin. We are also establishing limits for new area sources based on the type of resin that could potentially be produced: (1) Bulk resin, (2) dispersion resin, (3) suspension blending resin, (4) suspension resin and (5) copolymer resin.

TABLE 14—EMISSION LIMITS FOR STRIPPED RESINS AT NEW AND EXISTING AREA SOURCES

Subcategory	Pollutant	Emission limits (ppmw)	
		Existing sources	New sources
Bulk resin	Vinyl chloride	7.1	7.1
	Total non-vinyl chloride organic HAP	170	170
Suspension	Vinyl chloride	36	36
	Total non-vinyl chloride organic HAP	36	36
Dispersion	Vinyl chloride	1,500	1,500
	Total non-vinyl chloride organic HAP	320	320
Suspension blending	Vinyl chloride	140	140
	Total non-vinyl chloride organic HAP	500	500
Copolymer	Vinyl chloride	790	790
	Total non-vinyl chloride organic HAP	1,900	1,900

7. Wastewater

In the final rule, we are requiring that process wastewater streams at existing and new PVC area sources reduce the concentration of vinyl chloride and total non-vinyl chloride organic HAP, measured immediately as the process wastewater stream leaves a process component and before mixing with any other wastewater stream, to no more than the levels specified in Table 15 of this preamble. We are also requiring that wastewater streams from existing and new PVC area sources meet the same requirements for demonstrating compliance as major sources including maintenance wastewater work practices, as discussed in section IV.F.5 of this preamble.

TABLE 15—LIMITS FOR PROCESS WASTEWATER AT NEW AND EXISTING AREA SOURCES

Pollutant	Emission limits (ppmw)
Vinyl chloride	2.1
Total non-vinyl chloride organic HAP	0.018

J. What are the electronic data submittal requirements?

The EPA must have performance test data to conduct effective reviews (*e.g.,* risk assessment) of CAA section 112 standards, as well as for many other purposes, including compliance determinations, emission factor development and annual emission rate determinations. In conducting these reviews, the EPA has found it ineffective and time consuming, not only for us, but also for regulatory agencies and source owners and operators to locate, collect and submit emissions test data in paper form because of varied locations for data storage and varied data storage methods. In recent years though, stack testing firms have typically collected performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

In the final rule, the EPA is including a step to increase the ease and efficiency of data submittal and improve data accessibility. Specifically, we are requiring owners and operators of PVC production facilities to submit electronic copies of certain required performance test reports to the EPA's WebFIRE database. The WebFIRE database was constructed to store performance test data for use in developing emission factors. A description of the WebFIRE database is available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main*.

Data entry will be through an electronic emissions test report structure called the Electronic Reporting Tool (ERT). The ERT will generate an electronic report that will be submitted using the Compliance and Emissions Data Reporting Interface (CEDRI). The report is submitted through EPA's Central Data Exchange (CDX) network for storage in the WebFIRE database making submittal of data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/index.html* and CEDRI can be accessed through the CDX Web site (*www.epa.gov/cdx*).

The requirement to submit source test data electronically to the EPA does not create any additional performance testing and applies only to those performance tests conducted using test methods that are supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at *http://www.epa.gov/ttn/chief/ert/ert_tool.html*. Industry will benefit from this approach to electronic data submittal. Having these data, the EPA will be able to develop improved emission factors, make fewer information requests and promulgate better regulations. The information to be reported is already required for the existing test methods and is necessary to evaluate the conformance to the test method.

One major advantage of submitting source test data through the ERT is that it will provide a standardized method to compile and store much of the documentation required to be reported by this final rule. Another advantage is that the ERT clearly states what testing information is required.

Another important benefit of submitting these data to the EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. When the EPA has performance test data in hand, there will likely be fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews. This would result in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and the EPA (in terms of preparing and distributing data collection requests and assessing the results).

State, local and tribal agencies may also benefit from the more streamlined and accurate review process created by an electronic review process rather than a manual data assessment, making review and evaluation of the source provided data and calculations easier and more efficient. Finally, another benefit of the data submittal to WebFIRE electronically is that these data would greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data for establishing emissions factors and by ensuring that the factors are more representative of current industry operational procedures. A common complaint heard from industry and regulators is that emission factors are outdated or not representative of a particular source category. With timely receipt and incorporation of data from most performance tests, the EPA would be able to ensure that emission factors, when updated, represent the most current range of operational practices. In summary, consistent with Executive Order 13563, *Improving Regulation and Regulatory Review,* issued on January 18, 2011, in addition to supporting regulation development, control strategy development and other air pollution control activities, having an electronic database populated with performance test data should save industry, state, local, tribal agencies and the EPA significant time, money and effort, while also improving the quality of emission inventories and, as a result, air quality regulations.

V. Significant Public Comments and Rationale for Changes to the Proposed Rule

This section contains a summary of major comments and responses, and rationale for changes made to the proposed rule. The EPA received many comments covering numerous topics. The EPA's responses to those comments can be found either in this preamble or in the *National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production: Summary of Public Comments and Responses,* in the PVC docket (EPA–HQ–OAR–2002–0037).

A. Affected Sources

Comment: Two commenters requested clarification on the applicability of the EPA's definition of ''new source.'' One commenter pointed out that if a PVC manufacturing company were planning to commence construction of a new line, based on the proposed rule, the new line would trigger ''new source'' requirements regardless of the magnitude of HAP emissions.

Response: We believe that we have adequately addressed the concerns raised by the commenter by the way we have revised the definition of a new affected source because the addition of a PVCPU does not necessarily trigger a new affected source. In the proposed rule, the affected source was defined as each individual PVCPU, and a new affected source was a PVCPU for which construction commenced on or after May 20, 2011, at a major or area source. The proposed rule also required that, if components of an existing affected source were replaced such that the replacement met the definition of reconstruction in 40 CFR 63.2 and the reconstruction commenced on or after May 20, 2011, then that existing source becomes a reconstructed source and is subject to the relevant standards for a new affected source.

Under the proposed rule, the affected source was each PVCPU, but a PVCPU was defined to include all equipment connected by shared piping, including equipment that is typically shared by multiple units, such as heat exchangers and wastewater treatment systems. By defining a PVCPU in this manner, according to the commenter the rule

could be interpreted to mean that a change to any existing PVCPU such that it becomes subject to new source requirements or the addition of a new PVCPU could require existing affected sources also to comply with the more stringent new source standards. For example, if the facility chose to comply with the emission limits for the new PVCPU unit using an existing control device that also controlled emissions from other existing PVCPU, then all the PVCPU routing to that control device would have to meet the new source emissions limit because there would be no way to differentiate the streams at the control device. Because it might not be technically possible for existing PVCPU to meet the new source requirements, the alternative would be to construct dedicated controls or supporting process equipment for new sources. The same situation would apply to other shared equipment, such as heat exchangers and wastewater treatment. We did not intend such a result when we proposed the definitions of affected source and new source in 40 CFR 63.11870.

In light of the comments received, we are modifying the affected source definition to avoid the unintended results identified by the commenters with regard to the requirements for new sources.

In the final rule, the existing affected source is the facility-wide collection of all PVCPU, storage vessels, surge control vessels, heat exchange systems, wastewater and process wastewater treatment systems that are associated with producing PVC. A new affected source is any one of the following situations:

- All PVCPU, storage vessels, surge control vessels, heat exchange systems, wastewater and process wastewater treatment systems that are associated with producing PVC and are constructed at a Greenfield facility after May 20, 2011; or that are located at an existing facility that did not previously produce PVC prior to the rule proposal but has undergone process changes to start producing PVC.
- Reconstructed affected source.

Notwithstanding whether other approaches have been taken in other rules, the PVC NESHAP rule applies to a narrower selection of processes than HON or the Miscellaneous Organic Chemical Manufacturing NESHAP (MON), and we concluded that the affected source and new source definitions in the final rule are reasonable for the PVC industry. These edits clarify the requirements for new and existing sources and any further changes, such as defining threshold limits, are not necessary.

B. Overlapping Rules

Comment: Commenters expressed concern about overlapping requirements between the PVC MACT and other MACT that may be applicable to PVC and EDC/VCM facilities. One commenter requested that promulgation of the PVC MACT be delayed until a consolidated rule can be issued that also addresses EDC/VCM manufacturing facilities because the application of two separate rules is confusing to the regulated community. Another commenter proposed that the EPA expressly state that PVC vent streams and the centralized thermal oxidizers and ancillary equipment in which they are controlled with EDC/VCM vent streams not be subject to the requirements of the PVC MACT as long as they are controlled by the HON or other MACT standards because the commenter asserts that the EPA has made similar accommodations to address overlapping and conflicting requirements in previous MACT rules.

Other commenters requested that the EPA provide overlap provisions for facilities that are already subject to other MACT standards. The commenters stated that affected sources currently subject to other part 63 NESHAP should have the option to choose one compliance option for the entire source rather than trying to demonstrate compliance with two separate requirements for the same equipment. One commenter pointed out that the proposed rule could cause regulatory inconsistencies because, for a PVCPU utilizing a control device system already regulated under another part 63 MACT (e.g., HON), that control device would have to meet two different standards (i.e., HON MACT and PVC MACT).

One commenter proposed that the EPA should provide an option in the final rule that would allow the owner/operator to continue to comply with the existing 40 CFR part 63, subpart FFFF, the MON MACT in lieu of the PVC MACT rule if greater than 50 percent of the heat input or the organic HAP vent flow to a ''shared'' emission control device are from facilities that are subject to the MON MACT.

Response: In response to several of the comments, the final rule contains two subcategories for process vents: PVC-only process vents and PVC-combined process vents. Although this rulemaking is not consolidated with a rule for EDC/VCM production in the manner suggested by the commenter, the PVC-combined process vents subcategory addresses the concerns expressed. The process vent standards in the final rule for combined streams, e.g., from PVC and EDC/VCM, are based on and are consistent with emission testing conducted by the PVC and EDC/VCM industries in response to our CAA section 114 requests of PVC, VCM and EDC facilities. Our decision to set limits for the two process vent subcategories is further discussed in section V.D of this preamble. If a PVCPU uses a control device already subject to another Part 63 MACT rule such as the HON, then the facility may meet both sets of standards as applicable to the emission point or may choose to separate the two emission streams and route them to separate control devices, each complying with applicable requirements in the respective MACT standard. For the PVC process vent, the applicable standard may change from PVC-combined to PVC-only if the result is a process vent that qualifies as PVC-only.

We disagree with the commenters that requested the final rule should clearly state the governing rule when regulations overlap. If an emission point is subject to both the PVC NESHAP and other NESHAP because emissions from two source categories are vented to the same control device, both standards apply. Multiple standards applicable to one emission point for the same pollutant are not necessarily ''conflicting'' or ''inconsistent.'' In some standards, the EPA has allowed compliance with another overlapping standard where that other overlapping standard was determined to be at least as stringent. However for this rule, it would not be appropriate to state that sources automatically or optionally may comply with another NESHAP in lieu of the PVC NESHAP because the requirements of the other NESHAP may be less stringent than the PVC NESHAP, including its MACT floor-based standards. If the EPA were to allow sources to meet the requirements from overlapping, but potentially less stringent rules in lieu of the PVC standards, there is the possibility that PVC facilities would not meet the MACT floor based standards in this rule. Although we recognize that facilities may be subject to different NESHAP regulations, sources are responsible for ensuring that they comply with all applicable regulations. Many NESHAP regulations provide a wide variety of compliance options, and, as such, it would be a difficult task to identify in advance which is the most stringent requirement in each case. We also disagree with allowing PVC sources to comply with other regulations, such as the MON, instead of complying with the PVC MACT, if 50 percent of the heat input or vent flow to a control device is

from a source regulated by the other standard. Such an approach is unjustified because the emissions from the PVC process might not meet the PVC MACT limits and achieve the required HAP reductions (described in the previous paragraph).

C. Pollutants Regulated

Comment: One commenter contended that the CAA required that standards be set for individual HAP and that a 2004 District of Columbia Circuit Court decision established criteria that surrogates must meet. The commenter stated that the EPA does not acknowledge this test or provide an argument that total organic HAP satisfies the identified criteria: (1) Target HAP is ''invariably'' present in the surrogate pollutant, (2) methods to control or capture the surrogate pollutant ''indiscriminately'' control or capture the target HAP and (3) the controls for the surrogate are the ''only means'' by which facilities ''achieve'' reductions of the target HAP. Another commenter claimed that each pollutant should have emission limits and procedures that achieve reduction, instead of making vinyl chloride the surrogate. Another commenter added that the EPA's failure to set emissions standards for each HAP that PVC plants emit contravenes the CAA and that the EPA must demonstrate that total organic HAP (or total HAP as proposed for stripped resin and process wastewater) is a valid surrogate. One commenter suggested that limits for the individual most toxic and most prevalent HAP, as well as the total, should be developed. Another commenter added that the proposed rule only limited vinyl chloride in monitoring of leaks, process components and wastewater streams where there are other HAP and toxins present.

Other commenters agreed with the proposed rule that total organic HAP is the appropriate parameter for limiting organic HAP emissions and the only workable approach for developing limits that comply with the CAA. The commenters also explained that a total organic HAP limit provides the product flexibility needed by the industry's downstream customers. The commenters further submitted that setting standards for each individual organic HAP would not reflect an emission level that is achieved by the best performing facilities in the industry due to the variability in emissions across the best performing facilities, consistent with the Court's observations in the PVC MACT Case.

Response: Consistent with CAA section 112(d)(2) and (3), the EPA has set standards for all HAP emitted from the major source PVC source category. Contrary to the commenters' assertion, the EPA is not obligated to set a separate MACT standard for each and every individual HAP emitted by PVC major sources. Rather, as the Court recognized in *Mossville Envt'l Action Now* v. *Whitman,* 370 F.3d 1232, 1242 (D.C. Cir. 2004) (quoting *Nat'l Lime Ass'n* v. *EPA,* 233 F.3d at 637), the EPA has authority to use surrogates to regulate HAP ''if it is reasonable to do so[.]'' EPA has used surrogates, as appropriate, here and set standards for the HAP emitted from the major source PVC source category.

As discussed above, the final rule contains emission limits for vinyl chloride for process vents, stripped resin and process wastewater at PVC facilities. We have set separate limits for vinyl chloride, which is an organic HAP, because vinyl chloride is present in all emission points within the PVC source category and is already regulated at PVC facilities under the part 61 NESHAP. The final rule also contains process vent emission limits for THC, as a surrogate for organic HAP.

Further, the final rule contains process vent emission limits for CDD/CDF because unlike the vinyl chloride and other organic HAP emitted from process vents at PVC facilities, CDD/CDF are generated from combustion control of organic HAP from process vents and require separate test methods to be detected and measured. Indeed, CDD/CDF cannot be detected using the test methods available to test for other organic HAP.

Finally, the final rule contains process vent emission limits for HCl, which is an inorganic HAP that is generated from the combustion control of organic HAP from process vents. HCl is controlled in a completely different manner than organics and requires separate treatment (usually a scrubber following the thermal oxidizer). As shown below, HCl is also a surrogate for chlorine. We have limited test data indicating that chlorine may be present in emissions from process vents. The HCl standard will address such emissions, however, to the extent they exist.[1]

As noted above, we are finalizing a limit on THC as a surrogate for organic HAP emissions from process vents. THC is an appropriate surrogate, applying the 3-part ''test'' cited by the commenter. See *Sierra Club* v. *EPA,* 353 F.3d 976, 987 (D.C. Cir. 2004). First, the target HAP at issue here (*i.e.,* organic HAP) from PVC process vents are ''invariably'' present in the surrogate (THC), *i.e.,* PVC process vent emissions always contain organic HAP, and the organic HAP are comprised of hydrocarbons that will be measured as THC. Second, methods to control THC (in this case, a combination of vapor recovery, such as condensers, along with thermal oxidizers for PVC process vents) indiscriminately control the target organic HAP. Finally, the methods to control THC are the only means to achieve reductions of the target organic HAP from process vents that we have identified for this source category. We considered whether changes could be made to the VCM reaction process that is used to produce PVC and/or to the chemical inputs to the reaction process, and we concluded that such changes are not possible without fundamentally changing the PVC product being manufactured by these facilities. (See discussion below regarding variety of PVC products.) It is indisputable that the controls described above, which are necessary to meet the final emission limits, result in the removal of THC, which means organics are removed as well. Accordingly, we have met the three-part test identified by the commenter for surrogacy, as we have shown that THC is an appropriate surrogate for organic HAP from PVC process vents.

The three-part test upon which the commenter relies stems from a District of Columbia Circuit case that addressed the appropriateness of using particulate matter as a surrogate for non-mercury HAP. In a different case reviewing the PVC MACT standards issued in 2002, the District of Columbia Circuit held that the EPA has authority to use a surrogate ''if it is reasonable to do so[.]'' *Mossville Envt'l Action Now* v. *Whitman,* 370 F.3d 1242–43. We maintain that THC is a reasonable surrogate for organic HAP based on our determination that for PVC process vents there are always organic HAP in the THC, and PVC facilities will comply with the THC standard by using vapor recovery and thermal oxidization to reduce emissions of THC, which necessarily and indiscriminately will reduce emissions of all organic HAP. Thus, the removal of the THC will remove the organic HAP. *Mossville Envt'l Action Now* v. *EPA,* 370 F.3d 1232, 1242–43 (D.C. Cir. 2004).

Similarly, HCl is a reasonable surrogate for chlorine. Chlorine is present with the HCl, and the methods to control HCl would necessarily capture or control any chlorine that may be emitted by major PVC facilities. In addition, we are not aware of any other controls for the PVC industry that

[1] As discussed in the preamble to the proposed rule, all of the standards for process vents, stripped resin and process wastewater are in the form of concentration standards.

would achieve reductions in chlorine, other than the controls that would be required to meet the final HCl limit in this rule. For additional information on chlorine and HCl see the *Revised Baseline Emission Estimates for Major Sources in the Polyvinyl Chloride and Copolymers (PVC) Production Source Category and the Revised Costs and Emission Reductions for Major Sources in the Polyvinyl Chloride and Copolymers (PVC) Production Source Category* technical memoranda in the docket for this rule.

For stripped resin and process wastewater, the final rule includes emission limits for total non-vinyl chloride organic HAP, as opposed to THC. We were not able to establish a THC limit as a surrogate for organic HAP emissions from stripped resins and process wastewater because the data available to the agency, upon which the standards were based, were from sampling a slurry (liquid), not a gaseous stream which is necessary to collect THC data and to establish THC limits. Specifically, the data in the record were sampling data taken at the outlet of the resin strippers. The outlet of a resin stripper is the most readily available place to obtain a sample (as opposed to the resin dryer exhaust) and is appropriate given that we project that all of the HAP in the resin stripper outlet are ultimately emitted from downstream processes (*e.g.,* resin dryers). However, at the outlet of the stripper, the resin is in either a slurry (liquid) or dry (solid) form, as opposed to a gaseous stream, as is the case for process vents. There are no test methods available to determine levels of THC in a liquid or solid phase. Accordingly, we had no basis on which to set a THC limit and we, therefore, established limits for vinyl chloride and total non-vinyl chloride organic HAP from stripped resin and process wastewater.

However, the control approaches used to meet the total non-vinyl chloride organic HAP emission limits are the same as those used to reduce emissions of individual organic HAP species. Specifically, because total non-vinyl chloride organic HAP is comprised of many individual organic HAP, the reduction of total non-vinyl chloride organic HAP by means of a resin stripper (for resins) and a wastewater stripper (for wastewater) will likewise reduce the target individual non-vinyl chloride organic HAP. Further, we are aware of only one means to control organics from resins and process wastewater for this source category and that is through the use of a stripper, which indiscriminately controls all organics, and we are not aware of any other control that would indiscriminately capture all organics from resins and process wastewater. Accordingly, we believe it is reasonable to set a final limit for total non-vinyl organic HAP from resins and process wastewater.

Moreover, as some of the commenters recognized, a total non-vinyl organic HAP limit is particularly appropriate given the unique nature of this industry. We set the total non-vinyl chloride organic HAP MACT floor limit for stripped resin and process wastewater on specific information provided to the EPA from stripped resin and process wastewater sampling conducted by each company in response to our August 21, 2009, CAA section 114 survey and testing request of the PVC industry. In evaluating approaches to setting standards based on the stripped resin and process wastewater data, the EPA received uncontroverted information that a PVC facility can and often does produce many different grades [2] of PVC resin, each having different characteristics based on a different chemical formulation and production recipes and consequently different organic HAP emission profiles, and that different grades can be produced on a daily basis. PVC facilities produce a particular grade of resin according to the needs of their customers and their own business decisions, and based on information provided to the EPA by industry, we conclude that the organic HAP emitted necessarily varies depending on the particular grade of resin produced. In fact, according to one commenter, a particular facility may produce up to a 100 grades of different resins, sometimes producing different resins within a single 24-hour period. Given the large number of resins that may be produced by a particular facility, the associated diversity of chemical formulations and production recipes for these different resin grades, and the resulting differences in organic HAP emission profiles coupled with the fact that the control approaches used to meet the total non-vinyl chloride organic HAP emission limits are the same as those used to reduce emissions of individual organic HAP species and are the only means of achieving such reductions, we are finalizing total non-vinyl chloride organic HAP standards for stripped resin and process wastewater at PVC production facilities. These standards together with standards for vinyl chloride directly limit all organic HAP from PVC stripped resin and process wastewater at PVC production facilities, as reported in test/sampling data available to the EPA.

In response to comments, we created five subcategories in the final rule for stripped resins. If, as some of the commenters suggest, we were to set individual organic HAP limits, industry would likely argue that we would have to consider setting standards for a prohibitively large number of subcategories, perhaps as many as there are grades of PVC resin, to ensure that facilities producing grades of PVC resin with incompatible reaction processes and/or chemical inputs were not grouped in an inappropriate manner. In the final rule, we established the additional subcategories in response to comments where we found data in the record to support such subcategorization. Without extensive additional data from industry detailing each of the resin grades they produce, by facility, with attendant emissions information, we are not in a position to evaluate whether additional subcategories are appropriate. As such, we have no basis to establish additional subcategories on this record.

As explained previously, we are establishing THC as a surrogate for controlling all organic HAP other than vinyl chloride and CDD/CDF from process vents. However, as a compliance alternative in the final rule, facilities may comply with an equivalent total organic HAP emission limit in lieu of the THC limit for process vents. Such an alternative is appropriate for process vents for the same reasons that total non-vinyl chloride organic HAP limits are appropriate for stripped resins and process wastewater, as discussed above. (See preamble section III.C for further discussion on the emission limits we are establishing.) We also note that the approach of setting total organic HAP limits for process vents (or total non-vinyl chloride organic HAP limits for stripped resins and process wastewater) is consistent with the approach in other NESHAP, such as 40 CFR part 63, subpart FFFF (the MON), which has been successful in limiting, not only total organic HAP, but also individual organic HAP.

Finally, one commenter incorrectly states that the EPA set only vinyl chloride limits for monitoring of leaks, process components and wastewater streams. As explained above, the EPA set limits for pollutants, including but not limited to vinyl chloride, emitted from process vents, stripped resins and process wastewater. The commenter incorrectly states that the equipment leak and heat exchanger standards have only a vinyl chloride limit. In the final

[2] ''Grade'' of PVC resin is more specific than ''type'' of PVC resin. See definitions in 40 CFR part 63, subpart HHHHHHH.

rule, applicability of the equipment leak work practice standards is determined based on whether the equipment is in HAP service. In HAP service means that a process component (including equipment) either contains or contacts a liquid that is at least 5-percent HAP by weight or a gas that is at least 5 percent by volume HAP. Additionally, all equipment leak standards are based on determining VOC leaks from equipment using EPA's Method 21 and fixing leaks that are detected. VOC are present throughout the PVC process. As such, if you identify a leak of VOC, fixing that leak necessarily will eliminate the VOC emissions and any other HAP emissions. Thus, VOC is a marker that is indisputably present in all PVC streams. A HAP-specific equipment leak definition is not possible because EPA Method 21, which is the only currently approved EPA method to detect equipment leaks, detects VOC, not individual compounds.

For heat exchange systems, based on comments received, we are including in the final rule a vinyl chloride leak action level and monitoring requirements because vinyl chloride is always present along with other HAP when process material leaks into cooling water, and, therefore, detection of vinyl chloride and repair of the leak will control the leak for all HAP. However, because some facilities already have programs in place to detect total strippable VOC in cooling water, we are also providing that as an option for detecting leaks into cooling water. Here, the same principle applies in that, controlling the VOC leak will in turn control HAP that leak into the cooling water. Thus, irrespective of whether a source monitors for VOC or vinyl chloride, the result is the same: Controlling any such identified leak will, in turn control any HAP that leak into the cooling water.

Finally, with respect to the commenter that suggested that limits for the individual most toxic and most prevalent HAP should be developed, the commenter fails to recognize that EPA has authority to use surrogates to address HAP. The EPA has appropriately identified the HAP emitted from the PVC source category and set standards for those HAP, including using surrogates where appropriate.

Comment: Several commenters raised issues with the term ''HAP'' and related terms, such as ''total organic HAP'' and ''total HAP.'' Two commenters stated that, though the EPA refers to sampling and specific limits for HAP and organic HAP, there is no definition of HAP, organic HAP, or total organic HAP provided for process vents, stripped resin or other emission sources. Two commenters stated that these subsets of HAP should be restricted and defined because the PVC manufacturing process does not have the potential to emit the entire list of HAP designated by the CAA. Another commenter requested that a subset of the complete list of total organic HAP be defined specifically for suspension type process facilities. Two commenters submitted a subset of the complete list of organic HAP that they believe is appropriate to define in the rule. The commenters submitted 19 HAP that should be subjected to a stripped resin limitation through the total organic HAP approach and 11 additional HAP that were not detected, but were analyzed and reported as non-detect.

Response: The term ''hazardous air pollutant'' (HAP) is defined in 40 CFR 63.2 as ''any air pollutant listed in or pursuant to section 112(b) of the Act''. It follows directly that ''total non-vinyl chloride organic HAP'' means all organic HAP except vinyl chloride. The terms ''organic HAP'' and ''total organic HAP'' are commonly understood terms meaning HAP that are carbon based, individually or in total, respectively.

In the proposed rule, we did not limit the definition of total organic HAP for process vents to a specific set of organic HAP or total HAP for stripped resins and wastewater to a specific set of total HAP that are emitted by the PVC industry. Part of our intent through the issuance of the required process vent testing and resin sampling under our CAA section 114 authority was to obtain data on which HAP were in fact used, produced, and/or emitted from PVC production facilities. We have considered the commenters' suggestions on requiring compliance based on a subset of HAP, *i.e.,* those HAP that have the potential to be emitted from PVC facilities. Based on our analysis of the process vent testing data, resin sampling data, and responses to our August 21, 2009, CAA section 114 survey and testing request, we recognize that the industry does not emit all HAP, but rather only a subset of HAP, primarily organic HAP, as discussed above. We reviewed the commenters' lists of HAP for stripped resin and compared those lists to the sampling data submitted. We confirmed that PVC stripped resin and process wastewater has been shown to contain or may contain 30 of the HAP listed under section 112(b) of the CAA, in addition to vinyl chloride, and so we are requiring facilities to analyze, at a minimum, those 30 organic HAP and vinyl chloride, in both stripped resins and process wastewater samples. Although these 30 HAP are all the organic HAP we identified in the data available to the EPA, it is not appropriate to set individual HAP limits because the combination and quantity of each of these 30 HAP vary depending on the wide variety of resin grades produced within the PVC industry. As discussed previously, it would be impractical to set individual HAP limits specific to the potential large number of subcategories that would be necessary to account for the more than 100 different resin grades produced.

We are also requiring facilities to develop a facility-specific list of HAP for both stripped resins and process wastewater. The facility-specific list of HAP must include all HAP expected to be present in stripped resin and process wastewater samples, including any HAP not listed in table 10 of the final rule. Our analysis is documented in the memorandum, *Analysis of HAP in Stripped Resins and Wastewater for the Final PVC Rule.* Under this final rule, to meet the stripped resin and process wastewater total non-vinyl chloride organic HAP emission limits, you must test for those 30 HAP that are known to possibly be present in the PVC production process based on all the data available to the EPA, and, in addition, sources must test for HAP beyond those 30 that facilities are aware of based on the resin grades they produce. We are including those compounds to ensure that they would be included in the facility's calculation of total non-vinyl chloride organic HAP should those compounds become present in the process in detectable quantities.

For process vents, demonstrating compliance with the THC limit does not require testing based on a list of specific HAP as EPA Method 25A measures THC and not speciated HAP.

D. Subcategories

Comment: Two commenters contended that the EPA should use data from stand-alone PVC facilities to establish the process vent emission limits. Another commenter asserted that the agency recognized that it was important to set standards based on PVC-only vent gas flows and required industry to isolate and burn PVC-only vent streams at co-located facilities. The commenter added that thermal oxidizers at stand-alone EDC/VCM plants or co-located with PVC plants tend to be much larger than those at stand-alone PVC units. The commenter stated that to produce data in response to the CAA section 114 testing required for PVC facilities, large volumes of natural gas were burned to treat the small PVC-only vent streams to make up for the other

streams, such as EDC or VCM, that had been tied off as instructed by the CAA section 114 survey, resulting in a non-representative emission profile. The commenter noted that the Vinyl Institute Working Group submitted to the EPA a list of facilities (stand-alone PVC plants) that it believes is appropriate to use in setting the MACT floor for process vents.

Response: This final rule contains two subcategories for process vents: PVC-only process vents and PVC-combined process vents. In response to comments submitted by the industry and others, based on our review of those comments and a subsequent review of the testing data submitted in response to our August 21, 2009, CAA section 114 survey and testing request for the PVC industry, we determined that there are significant differences in the size and type of process vents that originate from PVCPU and process vents from PVCPU that are combined with process vents from other source categories, such as EDC/VCM or other HON sources, prior to control. The differences in the HAP concentrations in the process vent streams arise from the fundamental differences in the products, unit operations, and the manufacturing process of the source categories that are typically co-located with and/or that share a control device with a PVC affected source. Examples include EDC and VCM manufacturing processes, which are commonly co-located with a PVC production process and manufacture the primary raw materials (EDC is used to produce VCM) used in the production of PVC resin. Additionally, the average control device volumetric outlet flow rate is 2,100 percent greater for process vents from PVCPU that are combined with process vents from other source categories compared to process vents that originate only from PVCPU, a significant difference in size. Therefore, in the final rule, we have established two subcategories for process vents: PVC-only and PVC-combined. PVC-only process vents comprise process vent streams that originate solely from a PVC affected source. We agree with commenters who suggested that the testing conducted using large volumes of natural gas to treat these small PVC-only vent streams did not produce a representative emission profile. Therefore, we did not include those tests results to determine the PVC-only MACT floors for process vents. PVC-combined process vents comprise process vent streams that originate from a PVCPU and that are combined or are co-controlled with process vent streams that originate from other source categories, such as EDC or VCM production processes. Details on the determination of MACT floors and limits for process vents are documented in the technical memorandum, *Revised Maximum Achievable Control Technology (MACT) Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* which is available in the docket.

Comment: Two commenters contended that PolyOne's vent gas absorbers are recovery devices and not control devices because they capture and recycle vinyl chloride back into the production process, rather than treating it as a waste. The commenters added that, because PolyOne's vent gas absorbers do not operate at elevated temperatures or combust the vinyl chloride, they do not result in the formation of additional HAP or generation of unwanted by-products, such as CDD/CDF and greenhouse gases. The commenters contended that the proposed MACT would require backup thermal oxidizers to be used continuously. The commenter added that large amounts of energy will be consumed and greenhouse gasses emitted in an effort to control a tiny amount of VOC. The commenter concluded by arguing that consideration should be given to the overall air impact of operating backup thermal oxidizers continuously.

Another commenter stated that the flow rate out of PolyOne's absorbers is two orders of magnitude less than the emissions flow rate from control device technology that includes thermal oxidizers and scrubbers combined. The commenters stated that the proposed MACT should take emissions rates into consideration and not solely rely on emissions concentrations when establishing limits for recovery devices. One commenter added that for sites equipped with vent gas absorber recovery technology, thermal oxidizers are necessary only in the event of an outage or malfunction with the operation of the vent gas absorbers to ensure that any vinyl chloride, which is not recycled back to the process, is destroyed.

Response: The rule contains emission limits for process vents that apply at the point where the gaseous stream is released to the atmosphere. While we recognize that a vent gas absorber at the commenter's facilities recover vinyl chloride, those absorbers also have stacks that emit to the atmosphere and would therefore be subject to the process vent limit. The rule does not require that affected sources use a specific control or recovery device to meet the process vent limits, and the final emission standards are not based on whether a vent gas absorber is classified as a recovery device or control device. An affected source may use any control device to reduce the process vent emissions to meet the required limits. We considered setting alternative formats for the process vent emission limits. However, we did not have sufficient information provided from industry on process vent stream flow rates and concentrations to develop or evaluate other formats, such as mass emission rates.

Comment: Many commenters contended that the EPA should further subcategorize resins. One commenter stated that the EPA should recognize that resin recipes, production processes and equipment required for end product utility, govern the emissions and the ability to strip each type of resin. The commenter stated that the data provided by the Vinyl Institute demonstrate the differences between production processes and PVC morphology and particle size of the PVC products manufactured. The commenter added that these differences equate to differences in ability to steam strip the resin of vinyl chloride, among other things.

Several commenters stated that copolymer resins are a completely different chemistry from homopolymer resins and should be regulated through their own subcategory. The commenters requested that the EPA subcategorize stripped resin by differences in chemistry (co-monomers), raw material inputs, process equipment, resin types and grades or other factors, provided such subcategorization is reasonable.

One commenter objected to the agency's proposal to subcategorize resins as ''bulk'' and ''dispersion,'' with all other resins, including copolymers, suspension blending and suspension resins relegated to an ''other resin'' subcategory. The commenter stated that the EPA's proposed subcategorization scheme is textually inconsistent and will likely cause regulatory confusion within the industry. The commenter stated the agency's proposed subcategories ignore critical differences in processing equipment, material inputs and resin morphology that have a critical and differentiating impact on the HAP profile of the various resins. The commenter contended that, at a minimum, the EPA should organize stripped resin limits along the following subcategories for homopolymers: Suspension, dispersion, bulk and blending; and for copolymers: Suspension, dispersion, blending and solution. The commenter added that by

definition, ''copolymers'' were considered distinct enough from polyvinyl chloride polymers that the EPA used the conjunctive ''and copolymers'' to describe the source category being addressed here.

One commenter added that the EPA should subcategorize copolymers by the resin type because they are capable of being manufactured in different processes (suspension, dispersion and solution) that present completely different HAP emission profiles. The commenter stated that the general class of copolymers requires differentiation from the homopolymer category. The commenter added that within this copolymer class there are different resin types (suspension, dispersion, blending and solution) that require subcategorization similar to homopolymers. The commenter continued that for each resin type, however, the choice of co-monomer creates different HAP profiles affecting the HAP analyzed; co-monomers are chosen, based on the end product characteristics specified by the customer. The commenter added that the vinylidene chloride copolymer is a highly crystalline polymer, making the removal or stripping of vinyl chloride from the resin more difficult than typical PVC polymers. The commenter stated that, to require its facility to meet this proposed standard for all other resins, is technically infeasible, based on the unique chemistry used.

Several commenters contended that dispersion resins should be regulated separately from suspension blending resins. The commenters stated that dispersion resins and suspension blending resins should be included in the MACT as their own categories due to the very different nature of both the manufacturing technologies used and the resins produced. The commenter added that suspension blending resins are a type of specialty resin used in flooring, automotive interiors and synthetic leather products. The commenters stated that the proposed MACT does not specifically address suspension blending resins, leaving this class of resin manufacturing unclear. Further, for the same reasons discussed for dispersion resins, the commenters contended that suspension blending resins require a separate subcategory under the proposed MACT. The commenters asserted that suspension blending resins have very different characteristics than generic suspension resins, including smooth surfaces and different particle sizes of distribution, all of which present different challenges when stripping vinyl chloride from a different resin.

One commenter added that the previous 30-day data submitted pursuant to the EPA's CAA section 114 request for PVC facilities were not representative of blending PVC resin alone. The commenter stated that the data were for suspension, including suspension blending PVC resin. The commenter asserted that samples for regular suspension resin were composited with blending PVC resin samples to get one daily suspension analysis rather than analyzing the samples separately. The commenter stated that both categories react to steam stripping quite differently and truly are different products. One commenter submitted data to support their assertion that suspension blending PVC resin, because of its unique morphology, could not possibly be stripped to the levels proposed for suspension general purpose resin. Two commenters argued that further subcategories of suspension resins should either be established or considered. One commenter requested that the EPA subcategorize the emission limits for the ''other resin'' category into the following subcategories: Low molecular weight (LMW), high molecular weight (HMW) and general purpose.

Response: In the proposed rule, limits were developed for new and existing sources for three subcategories of PVC resin: (1) Bulk resin, (2) dispersion resin and (3) all other resins. Based on our review of the public comments and our concurrent review and analysis of the additional data on the vinyl chloride concentrations in stripped resins submitted by the PVC industry, we determined that the data clearly show that there are significant differences in the concentrations of vinyl chloride and other HAP that remain in the various types of resins following stripping. The differences in the concentrations of vinyl chloride and other HAP that remain in the various resin types are a direct consequence of several factors related to the overall process to produce each resin type. These factors include: The different raw materials necessary to produce each resin type, the unique process chemistry required to produce each resin type, the process conditions required to produce each resin type and differences in the morphology of the resin particles following polymerization. The current technology that is used to remove residual vinyl chloride and HAP from polymerized resin is steam stripping. The conditions under which steam stripping is performed are unique to the resin type being produced and the ability to strip, or remove the maximum amount of residual vinyl chloride and HAP from the resin types, is constrained by the resin morphology, product quality and customer end-use requirements. The different resin types all differ in morphology, particle size and porosity, which all affect the ability to remove residual, or unreacted VCM and other HAP from the resin matrix. For a steam stripping unit that is operating as designed to remove the maximum amount of residual vinyl chloride and HAP from polymerized resin, simply adding more steam to that unit may result in some additional removal of vinyl chloride and other HAP, but the additional heat from the steam will degrade the resin and thus negatively affect the resin quality such that it will not meet customer or performance specifications. Therefore, for the final rule, we are responding to the comments and information submitted to the EPA by dividing the limits for stripped resins into two general groupings: (1) Homopolymers and (2) copolymers. Homopolymer resins are further divided into four subcategories: (1) Suspension resin, (2) dispersion resin, (3) suspension blending resin and (4) bulk resin. Some commenters suggested further subcategorizing copolymer resins; however, the data submitted by industry to the EPA did not include sufficient specificity that would allow developing additional subcategories of copolymer resin types. Therefore, copolymer resins are not further subcategorized in the final rule. Other commenters suggested additional subcategories based on molecular weight, grade and other physical properties. However, we did not develop additional subcategories for various resin grades (e.g., LMW, HMW or general purpose) because this could have potentially resulted in hundreds or thousands of resin subcategories, each with its own MACT analysis, making such an approach impractical to establish and administer.

E. MACT Floor Calculation

Following proposal, industry submitted additional data and information on several emission sources: (1) Process vents, (2) stripped resins, (3) process wastewater and (4) gasholders. For process vents, stripped resins and process wastewater, we received additional data for organic compounds and HCl. Metal HAP are not present in the PVC production process. The post-proposal data submittals are available in the docket. The data were used to revise the MACT floors and impacts.

1. Additional Data Submitted Process Vents

Industry provided data clarifying which PVC facilities are co-located with EDC and VCM production or other source categories and which facilities are stand-alone PVC producers. Industry also provided clarification of the conditions (e.g., percentage contribution of the PVCPU to the total process vent stream) during stack testing conducted in response to our August 21, 2009, CAA section 114 survey and testing request sent to PVC companies. Industry identified which facilities typically co-control non-PVC streams. The EPA also received results of emissions tests conducted for EDC and VCM production facilities, some of which are co-located and co-controlled with PVC production facilities, as required by our March 16, 2011, CAA section 114 survey and testing request for VCM/EDC production companies. The CAA section 114 request required that emission data be collected by testing the VCM/EDC process vents for vinyl chloride, dioxin/furan and THC emissions. The results of emissions tests from the co-located and co-controlled facilities included data for PVC-combined process vents (e.g., any VCM/EDC process vent that also contains a PVC process stream) that were included in the MACT floor analysis for PVC-combined process vents.

Stripped Resin

Industry provided a database containing 4 years of daily average vinyl chloride concentrations in stripped resins, determined by using EPA Method 107 for all but two PVC production facilities. The provided database contained information for four specific resin types: (1) Suspension, (2) dispersion, (3) suspension blending and (4) vinyl acetate copolymer (VACO).

Industry also submitted an updated 30-day resin sampling concentration database for total HAP, based on using various EPA SW–846 Methods and providing additional specificity on resin types and corrections to previously submitted data; VACO and suspension blending data were separated from dispersion and suspension data, respectively. Another commenter submitted new vinyl chloride and total organic HAP data for suspension blending resin as a result of additional sampling and testing performed by the company independent of the EPA's CAA section 114 request for the PVC production industry.

Additionally, results that were reported as composites of two or more resin types were identified by resin type, and previous results from the OxyVinyls suspension plants that were indicated as a reporting limit (RL) were changed to non-detect. Vinylidene/vinyl chloride copolymer concentration data from Dow Chemical were also added to the database.

Wastewater

Commenters submitted approximately 1 year of vinyl chloride concentration data at the outlet of wastewater strippers for nine PVC production facilities. All concentrations were obtained using EPA Method 107. The data were provided on a varying basis across facilities (e.g., daily, weekly, monthly).

Gasholders

In response to industry comments, we requested and received annual emissions estimates for small and large sized gasholders. In addition to submitting comments regarding suggested control and work practice options for gasholders, industry also provided estimates of the capital cost and emission reductions for work practices that could be used to reduce emissions from gasholders, i.e., using floating objects.

Equipment Leaks

At proposal, we ranked the LDAR programs used at each affected PVC source from most stringent to least stringent, based on the leak definitions, monitoring frequencies, control requirements and repair requirements reported in the responses to our August 21, 2009, CAA section 114 survey and testing request. We then identified the LDAR programs employed by the best-performing five sources. The results of this analysis showed that three out of the best-performing five sources comply with 40 CFR part 63, subpart UU level 2 controls. Therefore, we proposed that existing and new affected sources comply with the LDAR program requirements of the National Emission Standards for Equipment Leaks-Control Level 2 Standards, subpart UU of 40 CFR part 63.

During the comment period, one of the facilities that had responded that they complied with subpart UU of 40 CFR part 63 (Shintech Freeport), stated that the survey response was in error, and the facility is actually complying with the equipment leak requirements of 40 CFR part 61, subpart V. This change results in a revision to the MACT floor for existing major sources, which is discussed in section V.E.2 of this preamble.

2. MACT Floor Revisions

In the final rule, we revised the MACT floor-based emission limits for process vents, stripped resins and wastewater, as discussed in the technical memorandum, *Revised Maximum Achievable Control Technology (MACT) Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* which is available in the docket.

Process Vents

In the final rule we calculated the MACT floors for the two process vent subcategories, PVC-only and PVC-combined, accounting for variability using the UPL calculation. At proposal, a 99-percent UPL calculation was used where the m value (representing the number of test runs used in the compliance average) was 30 for the THC compliance limit option. For the final rule, we changed the m value to 3 because 3 THC test runs using EPA Method 25A will be performed over the 5-year period with which compliance will be averaged. Therefore, an m value of 3 for the THC UPL calculation is appropriate.

In the final rule, we revised the procedure for identifying a representative method detection level (RDL) for vinyl chloride, HCl, CDD/CDF, THC and total organic HAP for PVC-only and PVC-combined process vents. At proposal, we determined the RDL by identifying the highest test-specific MDL reported by the top 5 best-performing facilities for each pollutant in each subcategory that was also less than the calculated average emission concentration of those top 5 best-performing facilities.

For the final rule, the RDL for vinyl chloride and total organic HAP was determined by identifying the available reported pollutant-specific MDL values for the top 5 best-performing units regardless of any subcategory. However, the data set of reported pollutant-specific MDL values included MDL values only from reference methods for new source performance standards (NSPS) and NESHAP rulemakings since they are the established compliance methods for air pollutants and have a more robust quality assurance procedure. For our August 21, 2009, CAA section 114 testing request, other test methods besides reference methods for NSPS/NESHAP (i.e., EPA SW–846 Method 0031) were used to account for all the possible HAP that could potentially be emitted from process vents. Emission data collected as a result of performance testing with non-reference methods for NSPS/NESHAP

were used in the MACT floor analyses since the resulting values could be measured using reference methods. From that combined pool of MDL data, we calculated the arithmetic mean value. We then called the resulting mean of the MDL values the RDL.

For HCl and CDD/CDF we used RDL values based on data collected for several hundred EPA Method 23 and EPA Method 26A emissions tests from various industries, a much larger data set than the one compiled only from PVCPU testing. The RDL values calculated from the larger data sets are more representative of the inherent measurement variability both within and between testing companies. The RDL values were determined by the same procedure described above for vinyl chloride and total organic HAP. All of the available reported pollutant-specific MDL values for the best-performing facilities regardless of any subcategory were identified and an arithmetic mean was calculated from the resulting data set and determined to be the RDL.

For THC, we determined that the RDL for EPA Method 25A for a 10-ppm propane span would be 0.5 ppm propane. We arrived at this RDL by surveying the typical flame ionization analyzers in use by the testing community and evaluating the required method criteria in EPA Method 25A. The survey of the instruments yielded several vender stated instrument detection limits from 0.01 to 0.5 ppm as carbon with one independent third party degermation of 0.8 ppm as carbon. In addition, several instruments' minimum reportable resolution is 0.1 ppm as propane. The method criteria allows for a 3-percent zero and span drift during performance runs and an initial criteria of 5 percent of the calibration gas. The sum allowable calibration error and drift would be approximately 0.475 ppm as propane (using a 3.5-ppm propane span gas), which would be higher than the instrumental detection limits.

For vinyl chloride, HCl, CDD/CDF, THC and total organic HAP, the MACT floor emission limit was compared to 3 times the RDL. As in the proposed rule, if 3 times the RDL was greater than the calculated MACT floor emission limit, we concluded that the MACT floor emission limit does not account entirely for measurement variability and, therefore, we used the value equal to 3 times the RDL in place of the calculated MACT floor emission limit. The variability analysis conducted for the final rule is contained in the memorandum titled *Revised Maximum Achievable Control Technology (MACT) Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* and is available in the docket.

Stripped Resin

Vinyl chloride and total HAP limits for stripped resins were calculated at proposal using a 99-percent UPL calculation and 30 days of vinyl chloride and other HAP data from all facilities that conducted resin sampling and analysis as part of our August 21, 2009, CAA section 114 survey and testing request for the PVC industry. In developing the proposal, we requested sources subject to the CAA section 114 request provide information on the residual compounds in the resin leaving the stripper on a mass-basis. After the mass-based sampling results were submitted to us, the Vinyl Institute, on behalf of the PVC industry, provided a database of the concentration values that were used by the facilities to convert their concentrations to mass-based values. For the proposed rule, we calculated limits for dispersion resin, based on the reported mass-based values for each HAP present in the resin, which we then converted to concentrations, based on dispersion resin production. The proposed limits for all other resin types (i.e., suspension resin) were calculated, based on the originally measured vinyl chloride concentration values that were reported by each suspension resin facility and compiled into the concentration database that was supplied to us by the Vinyl Institute. The limit for bulk resin was calculated using the vinyl chloride and other HAP concentrations provided by the single bulk resin manufacturing facility in their response to the CAA section 114 request for the PVC industry. Variability was not assessed in the calculation of the limit for bulk resin because the data for vinyl chloride and total organic HAP consisted of one unique value each.

We received numerous comments on our approach at proposal for calculating stripped resin limits, which included comments on the subcategories, the use of mass-based values for determining the limits for dispersion resin, the use of vinyl chloride concentration data collected via EPA Method 107 in calculating a total organic HAP limit where a different test method was used for other non-vinyl organic chloride HAP, our approach for accounting for variability in the stripped resin limits and the m value in the UPL calculation for both vinyl chloride and total organic HAP.

During the public comment period, the Vinyl Institute provided us with an updated database, as described above, of the vinyl chloride and other HAP concentration values that were measured as the resin was exiting the stripper(s) and that were not then converted by the facilities to mass values. We also received supplemental resin sampling data from one PVC facility (PolyOne) and further information regarding their previous data submittals. In consideration of the comments received and our subsequent review and analysis of the submitted data, we made several changes to the limits for stripped resins. No additional data were provided from the single bulk resin manufacturer, so the final limits for bulk resin were recalculated only to remove vinyl chloride from the calculation for the total non-vinyl chloride organic HAP limit. Variability was not assessed in the calculation of the limit for bulk resin because the data for vinyl chloride and total HAP consisted of one unique value each. For the final rule, we used the original concentration values, as measured during the required emission testing of our August 21, 2009, CAA section 114 survey and testing request, and analyzed it as the basis for setting the MACT floors for suspension, dispersion, suspension blending and copolymer resin. This provided a consistent basis to compare concentrations of vinyl chloride and other HAP and calculate limits on a consistent basis. At proposal, the vinyl chloride limits for all subcategories except for bulk resin were calculated using data obtained from EPA SW–846 Method 8260B and a representative detection limit analysis was performed, based on those data. For the final rule, vinyl chloride limits were determined by using a percentile calculated from 4 years of vinyl chloride concentration data from the top five sources that were obtained by sampling using EPA Method 107 and provided by the Vinyl Institute. The change in methodology was appropriate because the 4-year data set was sufficiently large (between 523 and 5,165 data points total for the calculation of each limit, depending on the resin subcategory, and not including bulk resin) that it is not necessary to estimate variability by use of the UPL equation. Rather, by using a percentile, variability is accounted for directly from the vinyl chloride data set comprised of the lowest emitting sources. Percentiles represent the specified slice of the sample data and unlike confidence and prediction intervals, they are distribution-free. Furthermore, the overwhelming majority of vinyl chloride concentration values reported were above the

detection limit for EPA Method 107 and therefore, a representative detection limit analysis did not need to be performed.

In the proposed rule, the total HAP limits for the stripped resin subcategories included the contribution from vinyl chloride. In the final rule, vinyl chloride concentrations were removed from the total HAP limit calculations, resulting in limits for total non-vinyl chloride organic HAP for all subcategories of stripped resin. This was appropriate because the data used to develop the MACT floors and limits for vinyl chloride in stripped resin were based on EPA Method 107. While vinyl chloride can be analyzed using EPA SW–846 Method 8260B, a total HAP limit that includes vinyl chloride analyzed using that method would be inconsistent with our separate limit for vinyl chloride alone, which is based on data obtained using EPA Method 107. Since we have developed a separate vinyl chloride limit, it is not necessary to include vinyl chloride as part of the total HAP limit for stripped resins. Because different test methods were used to develop the emission standards, we are requiring compliance testing and sampling based on the different test methods to demonstrate compliance with those standards. The differences in the test methods (e.g., the way that samples are collected and analyzed) caused the vinyl chloride emissions to differ by orders of magnitude when the same sample was tested using the two different methods. At proposal, variability was assessed for total HAP using a 99-percent UPL calculation with the m value set at 30 to represent 30 single daily total HAP values. For the final rule, variability was assessed for total non-vinyl chloride organic HAP using the 99-percent UPL calculation; however, because we are requiring compliance with the total non-vinyl chloride organic HAP limits for all subcategories to be based on a single 24-hour period taken once per month, we calculated the UPL for total non-vinyl chloride organic HAP using an m value of 1.

For the final rule, we revised the procedure for identifying an RDL for total non-vinyl chloride organic HAP. At proposal, we determined the RDL by identifying the highest test-specific MDL reported by the top 5 best-performing facilities for total HAP in each subcategory that was also less than the calculated average concentration of those top 5 best-performing facilities. For the final rule, the RDL for total non-vinyl chloride organic HAP was determined by identifying all of the available MDL values for the top 5 best-performing facilities regardless of any subcategory. From that combined pool of MDL data, we calculated the arithmetic mean value. We then called the resulting mean of the MDL values the RDL. As in the proposed rule, if 3 times the RDL was greater than the calculated limit, we concluded that the MACT floor limit does not account entirely for measurement variability and, therefore, we used the value equal to 3 times the RDL in place of the calculated MACT floor limit.

For the final rule, we excluded: (1) Copolymer resin data from Dow Chemical's Midland, Michigan, facility due to the lack of a sampling and analysis report documenting the analysis results, (2) data from Georgia Gulf's Aberdeen, Mississippi, and Plaquemine, Louisiana, facilities because the data reported from analysis using a modification to EPA SW–846 Method 8260B could not be compared to data reported from other PVC facilities that analyzed resin concentrations using an unmodified EPA SW–846 Method 8260B and (3) selected reported HAP concentrations from PolyOne's Henry, Illinois, facility due to unexpectedly high reported detection limits that we determined were inaccurate when compared to the reported detection limits from other facilities.

Wastewater

For the proposed rule, the wastewater vinyl chloride concentration limits were calculated using a 99-percent UPL calculation with an m value of 1 to represent monthly compliance, based on a single sampling event. The limits were calculated, based on data provided by facilities in their CAA section 114 survey responses. These data represented a mix of sampling data, engineering estimates and mass balance calculations. Post proposal, industry submitted 1 year's worth of vinyl chloride sampling data results from wastewater strippers at several facilities. For the final rule, we recalculated the monthly vinyl chloride concentration limits using a 99-percent UPL calculation, as described above, but the limits were calculated based on the actual vinyl chloride sampling data provided by the industry.

We used the UPL to assess variability in the calculation of the final limits for process wastewater. Despite the substantially larger vinyl chloride concentration data set provided by the industry during the public comment period, the percentile approach was not used as it was for the stripped resin vinyl chloride limits because the final data set was not sufficiently large (60 data points total, or 12 monthly vinyl chloride values for each of the top five performing facilities) and we had to make assumptions about the distribution of the data.

In the proposed rule, total HAP emission limits were based on a beyond-the-floor option of complying with the HON flow rate and concentration values. For the final rule, we calculated a total non-vinyl chloride organic HAP emission level at the MACT floor, based on non-vinyl chloride organic HAP data reported by PVC facilities and using the same calculation methodology used to determine the MACT floor vinyl chloride emission limit with compliance demonstrated on a monthly basis. In the proposed rule, the total HAP limit for wastewater included the contribution from vinyl chloride. In the final rule vinyl chloride concentrations were removed from the total non-vinyl chloride organic HAP limit calculation, resulting in total non-vinyl chloride organic HAP limits for process wastewater. This approach was appropriate since we are requiring different test methods to demonstrate compliance with the vinyl chloride and the total non-vinyl chloride organic HAP limits.

The determination of the RDL value for vinyl chloride was revised for the final rule as previously described for process vents. Industry did not provide non-detect data for total non-vinyl chloride organic HAP; therefore, non-detect data were not incorporated in the total non-vinyl chloride organic HAP limit calculation.

Equipment Leaks

Based on changes to information reported by Shintech Freeport, as discussed above, we revised the MACT floor analysis for equipment leaks at existing sources. The results of this analysis showed that two out of the best-performing five sources comply with 40 CFR part 63, subpart UU level 2 requirements, and the remaining three complied with 40 CFR part 61, subpart V. For the final rule, the MACT floor level of control for equipment leaks at existing sources, taking the median of the best-controlled five sources, is compliance with subpart V.

Comment: One commenter stated that in the proposed PVC MACT, new source emission limits for process vents, the resin stripper and wastewater were based on the best-performing emission source. However, the commenter stated that the data sets used to establish the new source MACT floor were not adequate or representative of the best performance from the source.

The commenter added that the new source process vent MACT floor was established by selecting the best performance of each individual HAP from all facilities. The commenter asserted that, as a result, no current facility can meet the control level represented by the proposed new source MACT. The commenter requested that the EPA re-evaluate the feasibility of the new source MACT floor analysis for on-going, continuous compliance.

Response: At proposal and in this final rule, we used the data available to us to conduct the new source MACT floor analyses. A reasonable interpretation of CAA section 112(d)(3) is that MACT floors may be established on a HAP-by-HAP basis, so that there can be different pools of best performers for each HAP. Indeed, as illustrated below, the total facility approach is not only not compelled by the statutory language, but can lead to results so arbitrary that the approach may simply not be legally permissible.

CAA section 112(d)(3) is not explicit as to whether the MACT floor is to be based on the performance of an entire source or on the performance achieved in controlling particular HAP. Congress specified in CAA section 112(d)(3) the minimum level of emission reduction that could satisfy the requirement to adopt MACT. For new sources, this floor level is to be ''the emission control that is achieved in practice by the best controlled similar source.'' For existing sources, the floor level is to be ''the average emission limitation achieved by the best performing 12 percent of the existing sources'' for categories and subcategories with 30 or more sources, or ''the average emission limitation achieved by the best performing 5 sources'' for categories and subcategories with fewer than 30 sources. The language of the CAA does not address whether floor levels can be established HAP-by-HAP or by any other means. The reference to ''sources'' does not lead to the assumption the commenters make that the best-performing sources can only be the best performing sources for the entire suite of regulated HAP. Instead, the language can be reasonably interpreted as referring to the source as a whole or to performance as to a particular HAP. Similarly, the reference in the new source MACT floor provision to ''emission control achieved by the best controlled similar source'' can mean emission control as to a particular HAP or emission control achieved by a source as a whole.

The EPA's long-standing interpretation of the CAA is that new source (as well as existing source) MACT floors are to be established on a pollutant-by-pollutant basis.[3] One reason for this interpretation is that a contrary approach could yield least common denominator floors—that is, floors reflecting mediocre or no control rather than what the best performers have achieved. See 76 FR at 15622, March 21, 2011; 61 FR at 173687, April 19, 1996; 62 FR at 48363–64, September 15, 1997 (same approach adopted under the very similar language of CAA section 129(a)(2)). Such an approach would allow a source that is not the best-performer for certain pollutants nonetheless to be considered the best performer overall, including for those same pollutants for which it is demonstrably not the best performer. It is even conceivable that the worst performing source for a pollutant could be considered the best performer for all pollutants, a result Congress could not have intended.

For example, if the best-performing five sources for vinyl chloride were also the worst performing sources for HCl and the best performers for HCl were the worst performers for vinyl chloride, under a total facility approach the floor would end up not reflecting best performance for HCl and vinyl chloride. In such a situation, the EPA would have to make a value judgment as to which pollutant reductions were most critical to decide which sources are best-controlled. See Petitioners Brief in *Medical Waste Institute et al.* v. *EPA,* No. 09–1297 (DC Cir.) pointing out, in this context, that ''the best performers for some pollutants are the worst performers for others'' (p. 34) and ''[s]ome of the best performers for certain pollutants are among the worst performers for others.'' Such value judgments are antithetical to the direction of the statute at the MACT floor-setting stage.

The central purpose of the amended CAA section 112(d) provisions was to apply strict technology-based emission controls on HAP. See, *e.g.,* H. Rep. No. 952, 101st Cong. 2d sess. 338. An interpretation that the floor level of control must be limited by the performance of devices that only control some of these pollutants effectively guts the standards by including worse performers in the averaging process, whereas the EPA's interpretation promotes the evident Congressional objective of having the floor reflect the average performance of best-performing sources. Because Congress has not spoken to the precise question at issue, and the agency's interpretation effectuates statutory goals and policies in a reasonable manner, its interpretation must be upheld. See *Chevron* v. *NRDC,* 467 U.S. 837 (1984).

The EPA notes, however, that if optimized performance for different HAP is not technologically possible due to mutually inconsistent control technologies (for example, if HCl performance decreased as organics reduction is optimized), then this would have to be taken into account by the EPA in establishing a floor (or floors). The Senate Report indicates that if certain types of otherwise needed controls are mutually exclusive, the EPA is to optimize the part of the standard providing the most environmental protection. S. Rep. No. 228, 101st Cong. 1st sess. 168 (although, as noted, the bill accompanying this Report contained no floor provisions). It should be emphasized, however, that the District of Columbia Circuit has stated that ''the fact that no plant has been shown to be able to meet all of the limitations does not demonstrate that all the limitations are not achievable.'' *Chemical Manufacturers Association* v. *EPA,* 885 F. 2d at 264 (upholding technology-based standards based on best performance for each pollutant by different plants, where at least one plant met each of the limitations but no single plant met all of them).

Such an approach would not meet the requirements of the CAA. For these reasons, the EPA's approach is the appropriate methodology for developing new source MACT floors and no further reevaluation is necessary.

Comment: Several commenters argued that the EPA calculated the MACT floor for vinyl chloride in stripped resin using data based on one analytical method (EPA Method 8260B) that typically underreports vinyl chloride and requires compliance with a different test method (EPA Method 107) developed specifically for vinyl chloride.

Response: We agree with the commenters that there was a tension in the proposed rule between the data used to establish the limits and the test methods required for compliance. We specifically solicited comment on this issue in the proposed rule. After consideration of information received after the proposed rule, including the potential benefits and drawbacks of both EPA SW–846 Method 8260B and EPA Method 107 in terms of vinyl chloride analysis, we conclude that EPA Method 107 is more appropriate for developing MACT floors and for determining

[3] We have done precisely that in this rule by setting emission standards for vinyl chloride, THC (or total organic HAP), total non-vinyl chlorideorganic HAP, CDD/CDF and HCl. See preamble section V.C.

compliance with such standards for vinyl chloride in stripped resins.

EPA Method 107 was specifically developed for use in the PVC industry and is the standard method for determining vinyl chloride concentrations in not only stripped resin samples, but also wastewater samples. The method provides for better extraction of the vinyl chloride and, therefore, produces more reliable and accurate, albeit nominally higher, concentration results. EPA SW–846 Method 8260B also allows for the analysis of vinyl chloride, but the method was not specifically developed for measuring vinyl chloride in PVC resin samples and so has lower reliability and accuracy compared to EPA Method 107 in this context.

Based on our analysis of data collected on vinyl chloride concentrations in stripped resin samples analyzed using both EPA Method 107 and EPA SW–846 Method 8260B, concentration values obtained using EPA Method 107 are consistently higher than the concentration values obtained on the same resin samples using EPA SW–846 Method 8260B. As such, compliance with a vinyl chloride limit based on data obtained using EPA SW–846 Method 8260B could not necessarily be determined based on compliance data obtained using EPA Method 107, making the Method 107 data inappropriate as a required basis for determining compliance with the limit based on data obtained from EPA SW–846 Method 8260B.

In the final rule, we calculated the MACT floor-based limits for vinyl chloride in stripped resins based on sampling data collected using EPA Method 107. We also require demonstration of compliance with the stripped resin vinyl chloride limits using EPA Method 107. In the final rule, we have also revised the stripped resin and wastewater limits for total organic HAP to separate vinyl chloride from those limits, resulting in total non-vinyl chloride organic HAP limits. As discussed above, EPA Method 107 is the preferred method for determining vinyl chloride concentrations in PVC stripped resin and wastewater. The EPA believes it would be inappropriate and inaccurate to determine and require compliance with total HAP standards by combining results from the two different methods because the EPA Method 107 data for vinyl chloride would be artificially overweighted compared to the data for non-vinyl chloride organic HAP based on analysis using EPA SW–846 methods, including Method 8260B, based on the significant differences in sampling results when using the methods on the same samples.

Comment: Several commenters stated that the data used to set the MACT floor are not based on normal operating conditions. One commenter stated that testing pursuant to the CAA section 114 request was conducted at the PVC production units in late 2009 and early 2010. The commenter contended that, during this period, the industry was operating by as much as 34 percent below its maximum production rates over the prior 3 years. One commenter contended that the test conditions were not representative of normal maximum operating conditions for a stand-alone PVC producer under which these values were determined and the EPA incorporated test results from much larger thermal oxidizers operated well under their maximum design operating conditions. To enable compliance with a reasonably proposed standard, the commenter stated that the EPA should revise the final rule to allow for new sources to come into compliance 3 years after the final rule is promulgated.

One commenter contended that the proposed limits for vinyl chloride, total organic HAP and HCl need to be factored-up to allow facilities to operate at maximum production rates. The commenter added that it is necessary to factor up proposed limits because the EPA's compressed schedule for gathering data did not allow facilities to test at maximum or near maximum operating rates. The commenter stated the rule, as proposed, requires facilities to perform compliance tests under hypothetical or actual worst case conditions (i.e., maximum operating rates), which is not the same conditions used to generate the data that set the standard for proposed vents. The commenter proposed, as an alternative, that industry should be allowed to test under the same conditions that were present during the stack tests conducted to comply with the CAA section 114 request.

Commenters indicated that tests done at the OxyVinyls Deer Park and Pasadena facilities and Formosa Plastics' Baton Rouge facility were conducted under abnormal operating scenarios that are not indicative of their normal operation. The commenters provided information on how the operating conditions during the test differed than at normal conditions. The commenters contended that the MACT floors should be calculated without these facilities. The commenter contended that data from that period are inappropriate for setting the MACT floor for maximum representative operating conditions. One commenter stated that during the data request for the MACT floor study, the EPA asked for data (stack testing and 30-day monitoring) related to ''normal operations'' in order to set up the MACT floor. However, the commenter asserted that the proposed rule set up limits for compliance (standards and operating limits) that are to be based on ''maximum operations'' from the subject facilities. The commenter contended that since the MACT floor data are different from what is expected from facilities for compliance with the standard, the EPA should either re-analyze the MACT floor data to revise the proposed regulatory requirements or ask the facilities for additional, and more specific, relevant data regarding maximum operating conditions. Other commenters contended that the EPA should have accounted for the testing variance that occurred by sampling and testing during a period of lower throughput for the industry. The commenters requested that the EPA adjust for lower production levels in the final rule.

Response: We agree with commenters that the OxyVinyls Deer Park and Formosa Baton Rouge facilities have PVC-combined process vents and should not be included in the PVC-only MACT floor calculation. OxyVinyls provided additional stack test information for the Deer Park facility in response to our CAA section 114 request for VCM/EDC facilities, and the OxyVinyls Deer Park facility has been included in the PVC-combined MACT floor calculation. Further discussion regarding the OxyVinyls Deer Park facility is found in response to comments below and responses regarding area sources. The Formosa Baton Rouge facility has PVC-combined process vents, not PVC-only process vents. However, they submitted test results in response to our August 21, 2009, CAA section 114 survey and testing request that were collected while the control device at the facility was controlling vent streams from the PVC process only. Therefore, the test results are not representative of a PVC-only facility due to an abnormally large amount of natural gas combusted during the time of testing to maintain operation of the thermal oxidizer. Furthermore, that facility was not included in our CAA section 114 request for VCM/EDC facilities. Therefore, we have excluded the Baton Rouge facility from any process vent MACT floor calculations. We disagree with the commenters that the OxyVinyls Pasadena facility be removed from the PVC-combined process vent MACT floor calculation due to the facility experiencing a

malfunction during process vent testing. According to the source, the specific nature of the malfunction at the OxyVinyls Pasadena facility allowed a percentage of the process vent stream to bypass the control device and enter the vent stack. As a result, both controlled and uncontrolled emissions were measured during process vent testing; however, the facility's measured concentrations were still low enough to be included in the top 5 best-performing facilities for PVC-only process vents for vinyl chloride, CDD/CDF, THC and total organic HAP. Had the malfunction not occurred, pollutant concentrations would have been even less than those determined during the time of testing and the facility would have still been included in the top 5 best-performing facilities. Therefore, we are including the OxyVinyls Pasadena facility in the MACT floor calculation for process vents.

We agree with commenters that the data submitted to the EPA in response to our August 21, 2009, CAA section 114 survey and testing request were collected under operating conditions of less than maximum capacity. Although commenters contended that the MACT floors should be adjusted for lower production levels in the final rules, commenters did not provide any empirical data or methodology to support modifying the limits. As such, we have no basis on which to consider revising the standards in response to this comment. We also agree with commenters that the testing schedule for our CAA section 114 request was compressed; however, commenters were not restricted from conducting additional testing and providing additional data to the EPA representing maximum operating conditions, yet, no such data were submitted. Accordingly, the EPA will use the data submitted by industry. Indeed, industry submitted 4 years of vinyl chloride resin data after the CAA section 114 testing request was completed and during the comment period.

We do not agree that the final rule should allow for new sources to come into compliance 3 years after the final rule is promulgated. The compliance date requirements for new and reconstructed sources are specified in the 40 CFR part 63 General Provisions at § 63.6(b).

Comment: Several commenters argued against combining the PVC major source MACT and area source GACT. One commenter argued that it was not Congress' intent to combine MACT and GACT requirements for sources listed in separate source categories, and that if this is going to be a trend moving forward, the EPA should undertake a separate rulemaking to identify and define, for public comment, the criteria it intends to use for combining major and area source categories. The other commenter stated that if the EPA chooses to make revisions to the limits for area sources, they should first remove area sources from the PVC MACT floor database and final rule and then reopen the PVC GACT rule to properly consider the available technology and impact of proposed revisions on small area sources. One commenter disagreed with the EPA's distinction between synthetic and natural area sources, arguing that because the CAA defines only two types of sources (major and area), any further distinctions are unlawful. Thus, they argue, the EPA's artificial distinction between true and synthetic area sources in order to include synthetic area sources in the PVC major source MACT floor database is unlawful and inconsistent with past agency practice. Furthermore, one commenter argues that by choosing to include synthetic area sources in the MACT floor analysis, the EPA is providing a strong disincentive for facilities to voluntarily reduce emissions to area source levels through enforceable permit limits. One commenter disputed all of the EPA's arguments for including synthetic area sources in the MACT floor:

(1) The commenter noted that the EPA stated that Congress did not expressly exclude synthetic area sources from MACT floor determinations. The commenter argued that Congress did not need to expressly exclude these sources because the sources were already excluded because they are not part of the major source category.

(2) The commenter further noted that the EPA has previously asserted that the definition of a major source, specifically the reference to a source's potential to emit considering controls allows the interpretation that a source's potential to emit before and after controls is relevant, such that synthetic minor sources may be considered within the meaning of the major source definition and included in the MACT floor determinations for categories for major sources. The commenter argued that the definition of what constitutes a major source allows a source's potential to emit to be determined while ''considering controls'' means only that a source may install controls and render itself an area source.

(3) The commenter referred to a floor statement of Senator Durenberger that the EPA cited to support its theory that the agency must take into account the ''better'' performing sources in setting the MACT floor. The commenter argued the statement demonstrates that it is the better performing sources within the source category that must be considered, and PVC area sources are not a part of the PVC major source category.

One commenter added that for the EPA to ignore distinctions between area and major PVC sources and use the OxyVinyls Deer Park facility in MACT floor calculations is unlawful. The commenter contended that the EPA incorrectly assumes the OxyVinyls Deer Park facility is a major source. The commenter stated that the facility is a ''true'' area source in contrast to the CertainTeed Mossville synthetic minor area source. The commenter contended that the CAA does not allow the distinction the EPA makes between synthetic and natural minor area sources, and the commenter provided detail of the regulatory history concerning major and area source classifications. The commenter provided additional detail regarding the classification of the OxyVinyls Deer Park and Certain Teed facilities, referencing previous communications with the EPA in which OxyVinyls informed the EPA that the OxyVinyls Deer Park facility is an area source. The commenter contended that the EPA cannot consider any PVC area sources in the major source PVC floor database because PVC major and PVC area sources are two separate source categories under the CAA. The commenter concluded by recommending the EPA recalculate the existing major source MACT floors, excluding the Deer Park and CertainTeed facilities.

Response: In the final rule, we have developed separate standards for major and area sources. We conducted a MACT floor analysis for major sources and a GACT analysis for area sources. Further discussion of the GACT analysis is provided in section V.H of this preamble.

We have reviewed data that OxyVinyls submitted to support their comment that their Deer Park, Texas facility is a ''true'' or natural area source. Based on the information provided, we are considering OxyVinyls Deer Park facility to be an area source for purposes of this rulemaking. Therefore, we are using data from this facility and from the CertainTeed facility in Mossville, Louisiana to establish area source GACT standards. However, we have also determined that the OxyVinyls Deer Park facility is a synthetic area source for the purposes of our analyses (without determining its status for any compliance purposes) because the facility routes emissions

from their process vents to a thermal oxidizer in series with an acid-gas scrubber. Without these controls, we would project the vinyl chloride and HCl emissions to be above the major source threshold. Similarly, for purposes of our analyses, we have determined that the CertainTeed facility is a synthetic area source because it uses controls, without which, their HAP emissions are projected to be above the major source threshold.

Even though the area source facilities would be subject to the area source standards, because they are synthetic area sources, we are including the information from both facilities in our analyses establishing the MACT floor level of control for major sources. As stated in the preamble to the proposed rule, the EPA maintains that including synthetic area sources in calculating the MACT floor is consistent with CAA section 112(d). Inclusion of synthetic area sources in the MACT floor determinations is also consistent with the agency's past practice in setting standards under CAA section 112(d). The inclusion of such sources affected the MACT floor level of control for the PVC-only HCl and PVC-Combined vinyl chloride and CDD/CDF process vents emission limits. Inclusion of synthetic area sources in the MACT floor determinations also affected the MACT floor level of control for the stripped resin limit for vinyl chloride and total non-vinyl chloride organic HAP in suspension and bulk resin. The vinyl chloride and total non-vinyl chloride organic HAP MACT floor emission limits for wastewater were also affected by inclusion of synthetic area sources.

Section 112(d) of the CAA directs the EPA to establish emission standards for each category or subcategory of major sources and area sources of HAP listed for regulation pursuant to section 112(c) of the CAA. Each such standard must reflect a minimum level of control known as the MACT floor. (See CAA section 112(d).) However, section 112 of the CAA does not specifically address synthetic minor or synthetic area sources, which include those sources that emit fewer than 10 tpy of any HAP or fewer than 25 tpy of any combination of HAP, because they use some emission control device(s), pollution prevention techniques or other measures (collectively referred to as controls in this preamble) adopted under federal or state regulations. If not for the enforceable controls they have implemented, synthetic area sources would be major sources under section 112 of the CAA.

We believe the better interpretation of the statutory language and legislative history is that synthetic area sources be included in MACT floor determinations. First, the plain language of the statute makes clear that our MACT floor determinations are to reflect the best sources in a category or subcategory. For new sources in a category or subcategory, the MACT floor shall not be less stringent than the emission control that is achieved, in practice, by the *best-controlled* similar source, as determined by the EPA. (See CAA section 112(d)(3).) For existing sources in a category or subcategory with fewer than 30 sources, the MACT floor may be less stringent than the floor for new sources in the same category or subcategory, but shall not be less stringent than the average emission limitation achieved by the *best-performing* 12 percent of the existing five sources (for which the Administrator has or could reasonably obtain emissions information)) in the category or subcategory. (See CAA section 112(d)(3)(A).) Thus, section 112(d)(3) of the CAA requires that MACT floors reflect what the best-controlled new sources and the best-performing existing sources achieve in practice. These phrases contain no exemptions and are not limited by references to sources with or without controls. Therefore, they suggest that all of the best-controlled or best-performing sources should be considered in MACT floor determinations, regardless of whether or not such sources rely upon controls.

Furthermore, section 112(d)(3) of the CAA expressly excludes certain sources that meet lowest achievable emission rate (LAER) requirements from MACT floor determinations for existing sources. (See CAA section 112(d)(3)(A).) The fact that Congress expressly excluded such LAER sources, but did not also exclude synthetic area sources suggests that no exclusion was intended for synthetic area sources. Indeed, nothing in the statute suggests that the EPA should exclude a control technology from its consideration of the MACT floor because the technology is so effective that it reduces source emissions such that the source is no longer a major source of HAP. (See 68 FR 2232, January 16, 2003, stating this rationale for including synthetic area sources in the floor determination for the final NESHAP for municipal solid waste landfills.)

Some commenters argue that because the PVC major and area source categories are separate, synthetic area sources (and natural (*i.e.,* non-synthetic) area sources) fall outside the regulated source category and should not be considered in MACT floor determinations. The EPA agrees that it listed PVC major and area source categories separately. (See 57 FR 31576, July 16, 1992, and 67 FR 43112, June 26, 2002.) However, the EPA disagrees that the CAA contemplates that synthetic area sources must be treated like true area sources and excluded from MACT floor determinations. Section 112(a) of the CAA defines a major source as: Any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants * * *. (See CAA section 112(a)(1).) An area source is defined as any stationary source of hazardous air pollutants that is not a major source. (See CAA section 112(a)(1).) In the major source definition, the EPA interprets the reference to a source's ''potential to emit considering controls'' as meaning that a source's potential to emit before and after controls is relevant, such that synthetic area sources may be considered within the meaning of this definition and included in MACT floor determinations for categories of major sources. Including synthetic area sources in MACT floor determinations ensures that MACT floors reflect the best-performing sources, as the CAA requires. The EPA also considered whether the reference to a source's potential to emit considering controls in the definition of major source necessarily means a source's potential to emit after controls have been implemented. While the EPA believes it is possible to read the phrase in this manner in isolation, such an interpretation would have the effect of excluding the best-performing sources from MACT floor determinations and, therefore, would be contrary to the statutory mandate that the EPA set MACT floors based on the levels the best-controlled new sources and the best-performing existing sources achieve in practice. The statutory reference to potential to emit considering controls should be read in a manner consistent with the other requirements of CAA section 112(d) to allow for the consideration of synthetic area sources in MACT floor determinations for major sources.

In addition, the legislative history suggests that synthetic area sources should be included in MACT floor determinations. In a floor statement, Senator Durenberger stated that in implementing section 112(d)(3) of the CAA, ''the [Senate] managers intend the

Administrator to take whatever steps are necessary to assure that [the Administrator] has collected data on *all of the better-performing sources within each category.* [The Administrator] must have a data-gathering program sufficient to assure that [EPA] does not miss *any sources that have superior levels of emission control.*'' (See Environment and Natural Resources Policy Division, Congressional Research Service, 103d Cong., S.Prt. 103–38 (prepared for the United States Senate Committee on Environment and Public Works), *A Legislative History of the Clean Air Act Amendments of 1990,* at 870, November 1993, emphasis added.) This statement underscores that Congress intended for MACT floor determinations to reflect consideration of all of the sources in each category with the best emission controls. It would be inconsistent with Congress's intent and the plain language of the CAA to exclude synthetic area sources—those sources with superior controls that became synthetic area sources by implementing such controls—from MACT floor determinations.

The inclusion of synthetic area sources in MACT floor determinations is justified because of the reasons explained above.

Accordingly, we did not exclude synthetic area sources from MACT floor determinations for major sources. For more information concerning MACT floors for the final standards, see section V.E.2 of this preamble and the memorandum, *Revised Maximum Achievable Control Technology (MACT) Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* in the docket.

Comment: Several commenters stated that dispersion resin limits should be based on measured concentration data and not calculated mass figures. Two commenters stated that the vinyl chloride limit proposed for dispersion resin was developed using a database that the EPA aggregated from producer submissions on a mass (pounds per day dry) basis and then re-divided by reported production volumes. The commenters listed several problems with the data used to convert the reported mass emissions to concentration limits by the EPA. The commenters recommended that the EPA simply use the underlying measured concentration data as the best and most accurate basis from which to develop the PVC MACT.

Response: For the final rule, we have revised the MACT floor-based emission limits for stripped resins. See section V.E.2 of this preamble.

Comment: One commenter stated they agree with the EPA's procedure for determining RDL. Another commenter contended that the EPA cannot justify its floor adjustment by asserting an inability to measure emissions below its triple-maximum-detection limit floor. The commenter stated that the record includes multiple sources that used lower detection limits; those sources demonstrate the feasibility of measuring emissions at lower levels. The commenter added that the agency specifies detection methods together with its standards; that detection method should have a known detection limit with a well-defined level of certainty. The commenter proposed that the agency could, accordingly, calculate its floor and as a second and independent step establish monitoring requirements that accommodate any imprecision associated with measurement, or it could utilize a safety factor. The commenter contended that the agency cannot, however, simply manipulate the limits according to standards that appear nowhere in the CAA.

Another commenter questioned the way in which the EPA addresses non-detects in air emissions. The commenter stated that multiplying by a factor of 3 is not presented in a clear way to show the rationale behind this calculation.

Response: As explained below, the final emissions limits were established using the RDL, which is based on an average, not the highest or lowest, of method detection levels for the best performing units. We agree with the commenter's suggestion to calculate the floor and then establish monitoring requirements to accommodate several factors, such as measurement precision near the detection limit.

We agree with many of the comments related to treatment of data reported as detection limit values in the development of MACT floors and emissions limits. The probability procedures applied in calculating the floor or an emissions limit inherently and reasonably account for emissions data variability including measurement imprecision when the database represents multiple tests from multiple emissions units for which all of the data are measured above the method detection level. That is less true when the database includes emissions occurring below method detection capabilities regardless of how those data are reported. The EPA's guidance to respondents for reporting pollutant emissions used to support the data collection specified the criteria for determining test-specific method detection levels.

Those criteria ensure that there is only about a 1-percent probability of an error in deciding that the pollutant measured at the method detection level is present when, in fact, it was absent. (See *Reference Method Accuracy and Precision (ReMAP): Phase 1, Precision of Manual Stack Emission Measurements*; American Society of Mechanical Engineers, Research Committee on Industrial and Municipal Waste, February 2001.) Such a probability is also called a false positive or the alpha, Type I, error. This means, specifically, that for a normally distributed set of measurement data, 99 out of 100 single measurements will fall within $\pm 2.54\ \sigma$ of the true concentration. The anticipated range for the average of repeated measurements comes progressively closer to the true concentration. More precisely, the anticipated range varies inversely with the square root of the number of measurements. Thus, if σ is the standard deviation of anticipated single measurements, the anticipated range for 99 out of 100 future triplicate measurements will fall within $\pm 2.54\ \sigma/\sqrt{3}$ of the true concentration. This relationship translates to an expected measurement imprecision for an emissions value occurring at or near the method detection level of about 40 to 50 percent.

By assuming a similar distribution of measurements across a range of values and increasing the mean value to a representative higher value (*e.g.,* 3 times MDL), we can estimate measurement imprecision at other levels. For an assumed 3 times the MDL, the estimated measurement imprecision for a 3-test-run average value would be on the order 10 to 20 percent. This is about the same measurement imprecision as found for EPA Methods 23 and 29 indicated in the ASME Precision of Manual Stack Emissions Measurements for the sample volumes prescribed in the final rule (*e.g.,* 4 to 6 dry standard cubic meters (dscm)) for multiple tests.

Analytical laboratories often report a value above the method detection limit that represents the laboratory's perceived confidence in the quality of the value. This arbitrarily adjusted value is expressed differently by various laboratories and is called limit of quantitation (LOQ), practical quantitation limit (PQL) or RL. In many cases, the LOQ, PQL or RL is simply a multiplication of the method detection limit. Multipliers range from 3 to 10. Because these values reflect individual laboratories' perceived confidence, and, therefore, could be viewed as arbitrary, we decline to adopt the LOQ, PQL or RL because such approaches in our view would inappropriately inflate the MACT

floor standards. Our alternative to those inconsistent approaches is discussed below.

Consistent with findings expressed in reports of emissions measurement imprecision and the practices of analytical laboratories, we believe that using a measurement value of 3 times a method's detection limit established in a manner that assures 99-percent confidence of a measurement above zero will produce a representative method RL suitable for establishing regulatory floor values.

On the other hand, we agree with commenters that an emissions limit determined from a small subset of data or data from a single source may be significantly different than the actual method detection levels achieved by the best-performing units in practice. This fact, combined with the low levels of emissions measured from many of the best-performing units, led the EPA to review and revise the procedure intended to account for the contribution of measurement imprecision to data variability in establishing effective emissions limits. In response to the comments and internal concerns about the quality of measurements at very low emissions limits especially for new sources, we revised the procedure for identifying an RDL

The revised procedure for determining an RDL starts with identifying all of the available reported pollutant specific method detection levels for the best-performing units regardless of any subcategory (*e.g.,* existing or new, fuel type, etc.). From that combined pool of data, we calculate the arithmetic mean value. By limiting the data set to those tests used to establish the floor or emissions limit (*i.e.,* best performers), we believe that the result is representative of the best-performing testing companies and laboratories using the most sensitive analytical procedures. We believe that the outcome should minimize the effect of a test(s) with an inordinately high method detection level (*e.g.,* the sample volume was too small, the laboratory technique was insufficiently sensitive or the procedure for determining the minimum value for reporting was other than the detection level). We then call the resulting mean of the method detection levels the RDL as characteristic of accepted source emissions measurement performance.

The second step in the process is to calculate 3 times the RDL to compare with the calculated floor or emissions limit. This step is similar to what we have used before including for the Portland cement MACT determination. We use the multiplication factor of 3 to reduce the imprecision of the analytical method until the imprecision in the field sampling reflects the relative method precision as estimated by the ASME ReMAP study. That study indicates that such relative imprecision remains a constant 10 to 20 percent, over the range of the method. For assessing the calculated floor results relative to measurement method capabilities, if 3 times the RDL were less than the calculated floor or emissions limit (*e.g.,* calculated from the UPL), we would conclude that measurement variability was adequately addressed. The calculated floor or emissions limit would need no adjustment. If, on the other hand, the value equal to 3 times the RDL were greater than the UPL, we would conclude that the calculated floor or emissions limit does not account entirely for measurement variability. Where such was the case, we substituted the value equal to 3 times the RDL for the calculated floor or emissions limit, which results in a concentration where the method would produce measurement accuracy on the order of 10 to 20 percent, which is similar to other EPA test methods and the results found in the ASME ReMAP study.

We determined the RDL for each pollutant using data from tests of all the best performers for all of the final regulatory subcategories (*i.e.,* pooled test data). We applied the same pollutant-specific RDL and emissions limit adjustment procedure to all subcategories for which we established emissions limits. We believe that emissions limits adjusted in this manner, which ensures that measurement variability is adequately addressed relative to compliance determinations, is a better procedure than the one applied at proposal, which was based on more limited data. We also believe that the currently available emissions testing procedures and technologies provide the measurement certainty sufficient for sources to demonstrate compliance at the levels of the revised emissions limits.

As for the commenter's suggestion that the EPA utilize a safety factor, the commenter provided no additional explanation of what a safety factor is, how it should be calculated and used, and no additional information to calculate such a factor.

Comment: One commenter stated that the EPA has set impossibly low limits for CDD/CDF, given the detection limits for EPA Method 23. Several commenters contended that, considering the body of available evidence on this subject, the EPA should not set limits below 0.1 nanogram toxic equivalent (TEQ) per dscm for CDD/CDF. Several commenters asserted that the CDD/CDF emission level of 0.023 nanograms per dry standard cubic meters (ng/dscm) proposed for PVC facilities is below levels that can be accurately measured.

Several commenters stated the EPA should impose work practice standards rather than emission limits to control CDD/CDF emissions or adjust the CDD/CDF standard to account for measurement uncertainty. One commenter stated that the EPA's decision to propose such conservative requirements for CDD/CDF testing is particularly surprising and unjustified in light of the EPA's own estimates of the very low overall reduction of CDD/CDF emissions that would be achieved by this rule. The commenter also noted that the EPA recognized the CDD/CDF dataset contains nearly 50-percent ''non-detect'' data. The commenter added that previous MACT rulemaking efforts for other comparable subparts, including the MACT rule for Hazardous Waste Combustors (40 CFR part 63, subpart EEE) or the Industrial Boiler and Process Heater MACT (40 CFR part 63, subpart DDDDD), typically allow for either a work practice standard or for one-time CDD/CDF emissions testing of units subject to the rule. In contrast, the commenter asserted that the EPA has not proposed to allow for work practice standards and other emission standards (*e.g.,* control of temperature in the air pollution control system and emission standards for vinyl chloride and HCl) to control CDD/CDF emissions in the PVC MACT rule and instead, proposes to establish CDD/CDF emission standards at or below the detection capabilities of EPA Method 23 along with expensive testing for CDD/CDF annually. The commenter further stated that because PVC-only plants have similar CDD/CDF emissions, PVC-only plants should not be subject to numerical limits for CDD/CDF emissions.

One commenter stated that section 112(h) of the CAA provides that ''if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard * * * the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard'' and also cited *Sierra Club* v. *EPA,* 479 F.3d 875, 883 (DC Cir. 2007). The commenter stated that the EPA must first make a determination that ''the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations,'' not that it lacks emissions data to set a limit. The commenter added they believe that PVC facilities face precisely the type of

technological constraints in measuring for CDD/CDF that require the use of work practice standards.

Response: The commenters are correct that, at proposal, 50 percent of the CDD/CDF dataset was at non-detect levels. However, with the addition of the EDC/VCM information submitted by industry in response to the CAA section 114 request for the EDC/VCM industry, that number has decreased to 38 percent. In comparison, 10 of the Boiler NESHAP subcategories in 40 CFR part 63, subpart DDDDD contained CDD/CDF datasets with non-detect values greater than 80 percent of the data, with most having non-detects greater than 90 percent of the data. As a result, the EPA determined that a work practice standard would be appropriate for the major source Boiler NESHAP. Likewise, in the final Mercury and Air Toxics Standards signed by the Administrator on December 16, 2011, the EPA established work practice standards for CDD/CDF because the significant majority of data from all the generating units were below the detection levels of the EPA test methods. Such is not the case for the PVC data. Given the significantly greater level of detected information for PVC process vents it is apparent that CDD/CDF can be detected in PVC process vent streams. Therefore, we maintain that numerical emission limits are appropriate rather than work practices to control CDD/CDF emissions from PVCPU process vents. As discussed previously, the emission limits for CDD/CDF have been revised, based on new data collected from EDC/VCM manufacturers and new subcategories. We reviewed much larger data sets of EPA Method 23 CDD/CDF test data and determined that representative detection levels equal to 0.018 ng/dscm are achievable for sample volumes less than or equal to 6 dscm. As a result, the final rule requires a CDD/CDF TEQ emission limit of 0.038 ng/dscm for PVC-only process vents at existing and new sources, 0.051 ng/dscm for PVC-combined process vents at existing sources, and 0.034 ng/dscm for PVC-combined process vents at new sources. We estimate that 10 out of 13 sources for which we have data are able to meet the emission limits without additional control. We are not prescribing a particular control technology for the remaining facilities. Affected sources may use any control technique to meet the CDD/CDF limits. We believe sources can use techniques such as enhanced vapor recovery prior to combustion as a means to reduce chlorinated compounds resulting in less chlorine available to form CDD/CDF. For the impacts estimate, we estimated the cost for enhanced vapor recovery (*e.g.,* condensers) prior to combustion. Cost and emission reductions estimation are documented in the memorandum, *Revised Costs and Emission Reductions for Major Sources in the Polyvinyl Chloride and Copolymers (PVC) Production Source Category*.

F. Emission Source Requirements

1. Process Vents

Comment: One commenter raised several issues with the proposed definition of process vent. First, the commenter argued that the definition of process vent is too broad and incorporates emission points that are already regulated under other sections of the rule. Specifically, the commenters contended that unloading and loading lines, samples, wastewater collection and treatment systems and ''other process components prior to the resin stripper'' should be removed from the definition of process vent because including them in the process vent definition is in conflict with the proposed definitions of batch and continuous process vents. The commenter contended that wastewater collection and treatment systems should be excluded because they would already be regulated under the wastewater provisions specified in 40 CFR 63.11965 and 40 CFR 63.11970 of the proposed rule. In the case of ''other process components prior to the resin stripper,'' the commenter contended that this is too broad a term, and at a minimum, the EPA should clarify what is meant by this term in the context of the process vent definition. Instead of the current proposed definition, the commenter suggested the following definition for process vent: ''Process vent means batch process vent or continuous process vent.'' The commenter also proposed that the definitions of batch and continuous process vents should provide an exclusion for gaseous streams routed to a fuel gas system. The commenter stated that because gaseous streams have a useful purpose and most other 40 CFR part 63 NESHAP exclude gaseous streams from the definition of a process vent, they should not be considered process vents in this rule.

Response: In the final rule, we have revised the definition of process vent, continuous process vent and batch process vent to provide additional clarification, and we have added a definition for miscellaneous vent. These revisions also provide additional consistency with the changes made to the affected source definition, the definition of PVCPU and the new definitions for PVC-only process vent and PVC-combined process vent. See section V.I of this preamble for a complete discussion of the revised and added definitions.

2. Equipment Leaks

Comment: Several commenters contended that the proposed requirement to have double mechanical seals and double outboard seals on rotating equipment is a beyond-the-floor control option and not a representation of the current control level within the industry. The commenters stated that there are no PVCPU that exclusively utilize double mechanical seals throughout the PVCPU, but instead these technologies are used in limited areas of the PVC production process and different technologies are used in other areas. The commenters added that because the proposed requirements are actually beyond-the-floor options, the revised rule should allow subject facilities the option to comply with all the provisions of the promulgated 40 CFR part 63, subpart UU MACT standard. The commenters also contended that installation of further controls will constitute a burden on facilities and will provide minimal benefits in the form of potential HAP emission reductions. One commenter pointed out that proposed 40 CFR 63.11915(b)(1) and (2) would require pump seal installations that are optional under 40 CFR 63.1026(e) of subpart UU. Likewise, they argued, proposed 40 CFR 63.11915(b)(5) would require agitator seal installations that are optional under 40 CFR 63.1028(e) of subpart UU. The commenter argued that the EPA should revise the pump and agitator seal section to be consistent with subpart UU.

Response: The proposed requirement that reciprocating pumps, reciprocating and rotating compressors and agitators be equipped with double seals, or equivalent, was in error. In the final rules, we have adopted the MACT floor level of control for equipment leaks for all components (which is compliance with 40 CFR part 63, subpart UU), which gives affected sources the option of installing double seals, or equivalent, or complying with the LDAR requirements of the equipment leak standards.

Comment: Several commenters opposed the proposed requirements for PRD that any release is an automatic violation. The commenters contended that this requires a costly retrofit with little additional environmental benefit. Commenters contended that this provision is in contradiction to a long-standing recognition by the EPA that

some PRD discharges are necessary; for example, they stated the current rule recognizes that proper operation of PRD (including using emergency relief valve discharges, currently exempted) is a necessary component of safe and responsible plant operation. One commenter recommended that the EPA revise the proposed language at 40 CFR 63.11915(c) to read ''[a]ny release to the atmosphere from a pressure relief device in HAP service, except for an emergency relief discharge * * * constitutes a violation of this rule.''

Several commenters added that in the affirmative defense requirements, the EPA acknowledges safety-related relief valve discharges. Commenters pointed out that the affirmative defense criteria state in 40 CFR 63.11895(a): ''(4) If the excess emissions resulted from a bypass of control device components or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; * * * (6) All emissions monitoring and control systems were kept in operation, if at all possible, consistent with safety and good air pollution control practices.'' In addition, some commenters contended the low reportable quantity thresholds and Toxic Release Inventory reporting are adequate incentives for facilities to minimize discharge events, thus, allowing for affirmative defense is appropriate. The commenters stated other MACT standards like the HON and the Consolidated Air Rule also make allowances in the closed vent system bypass rules that account for safety-related pressure valve releases, and, thus, that in order to avoid unsafe conditions and prevent loss of life, personal injury or severe property damage, the EPA should allow facilities to claim an affirmative defense for safety-related releases.

Response: PRD releases are already prohibited at all PVC facilities by the part 61 NESHAP, except when ducted to a control device meeting the 10 ppm limit that applies to process vents or in an emergency relief discharge (40 CFR 61.65(a)). In this CAA section 112(d) NESHAP rulemaking, which builds upon the part 61 NESHAP, we have developed emission standards that are continuous and consistent with *Sierra Club* v. *EPA.* Commenters do not have any legal basis for failing to apply an emission standard to PRD releases. We believe that PRD releases at PVC facilities are caused by malfunctions or other occurrences. However, such circumstances do not justify commenters' suggestion that no standard applies to such releases. Further, the proposed affirmative defense would be available for PRD releases caused by malfunctions. Therefore, we are not exempting emergency PRD releases in the final rule. See *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008). Therefore, the final rule provides that a PRD release, unless ducted to a control device meeting the process vent limits, is a violation of the emission standard.

Release events from PRD have the potential to emit large quantities of HAP. In that case, it is important to identify and control any releases in a timely manner. Therefore, we are requiring you to install electronic indicators on each PRD that would be able to identify and record the time and duration of each pressure release. In addition to ensuring that significant releases are addressed, these requirements will also alert operators to any operational problems with the PRD seal that could be resulting in emissions to the atmosphere. Furthermore, if danger is imminent and a PRD releases to the atmosphere, facilities have the ability to assert an affirmative defense.

As discussed in the proposed rule, we are including an affirmative defense to civil penalties for exceedances of emission limits. See 40 CFR 63.12005 of the proposed rule (defining ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also are requiring that other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 63.11895 of the proposed rule. (See 40 CFR 22.24.) The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions ''[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *.'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with 40 CFR 63.11895 of the proposed rule and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when the applicable emission limitations were being exceeded * * *'' and that ''[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *.'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with section 113 of the CAA (see also 40 CFR 22.77).

Comment: Several commenters argued that multiple systems and procedures already exist at facilities to detect and remedy releases from PRD and, thus, automatic release indicators are redundant. These commenters stated retrofitting existing PRD with release indicators would be costly, and installation of these devices will not result in any emission reduction because they are indicators only. Commenters contended that the PVC industry is currently subject to both environmental and safety standards that adequately address concerns with the detection of emissions from relief devices, such as 40 CFR part 61, subpart V requirements in 40 CFR 61.242–4. Two commenters pointed out that most PVC plants typically have rupture discs installed below relief valves that discharge to the atmosphere, and monitor the space between the rupture disc and the PRD for leaks on a routine basis using a local pressure indicator and log this information for safety purposes. One commenter contended that the EPA should at least perform a cost-benefit analysis before finalizing this requirement. Several commenters contended that given the cost, multiple systems currently in-place, and the lack of any emissions reductions, the EPA should delete the requirement for release indicators at proposed 40 CFR 63.11915(c).

Response: We acknowledge, based on information from the commenters, that the PVC industry typically installs area monitors in addition to rupture discs in series with relief valves. We also acknowledge other commenters' statements that multiple systems and procedures exist to detect and remedy releases from PRD, although they did not identify specific systems or procedures for the EPA to consider. However, the commenters did not suggest that the EPA adopt any type of

monitoring or recordkeeping requirement for PRD discharges, and commenters' statements taken as a whole do not support a conclusion that all PVC facilities currently install and use effective means to detect and record PRD discharges for all of their PRD.

Release events from PRD have the potential to emit large quantities of HAP, and a large number of these releases that may occur may not be identified and controlled in a timely manner, and may be due to repeat problems that have not been corrected. In the final rule, PRD are required to be equipped with indicators to identify and record the time and duration of each pressure release. The requirement to install indicators to identify and record the time and duration of each pressure release is a compliance requirement to ensure the PRD requirements in the final rule are met. They help ensure that any PRD discharge, *i.e.,* a release of uncontrolled HAP emissions, is immediately known to the source operator and recorded for future consideration by the facility or regulatory authority, so that remedial or preventative action can be taken to minimize or avoid PRD discharges in the future. The cost of the electronic indicators is incorporated into the costs of the final rule. Our cost estimates are based on the best information available to the EPA. While commenters indicated the EPA costs were underestimated, they did not provide sufficient information to revise our estimates.

Additional discussion on our decisions regarding PRD is found in the response to the previous comment.

3. Resin

Comment: One commenter noted that 40 CFR 63.11960(d)(2) and (3) of the proposed rule states that: ''If an operating limit is a range, then you must operate the stripper as close as possible to the maximum or minimum operating limit for the resin stripper, whichever results in higher emissions (i.e., lower emission reduction).'' The commenter added that the purpose of an operating range is to allow for normal variability and fluctuation inherent in the process, and by requiring that compliance measurements be performed at operating conditions resulting in the highest emissions, the agency is artificially increasing both the chance that a single compliance measurement would be out of compliance, as well as the overall emissions loading used to evaluate the environmental performance of the unit. The commenter submitted that such operating limits applied to resin strippers are inappropriate and that where conditions exist that operating limits are appropriate, proper measurement protocol would be to require sampling within the normal operating ranges, not at a particular point within.

Response: In the final rule, for stripped resins as well as for process wastewater, we are no longer requiring sources to comply with operating limits and conduct continuous parametric monitoring. The requirements to conduct resin sampling are sufficient to assure compliance with the stripped resin limits.

In our review of the resin sampling data in conjunction with the establishment of additional subcategories for stripped resins (see discussion above), we recognize that while resin subcategories are established at the type of resin, there are a multitude of resin grades produced by facilities that fall under a general resin type. Some facilities may produce on the order of hundreds of different grades for any one particular resin type. For the same reasons outlined as to why we are establishing additional subcategories for stripped resins in the final rule, we recognize that there are also differences in the formulations, recipes and processing conditions in the polymerization reactors and/or resin stripper for different resin grades of the same resin type. The establishment of resin subcategories at the grade level would be impractical because an inordinate number of subcategories would have to be established for hundreds, if not thousands, of different grades of resin. As such, the MACT limits established at the level of resin type will account for the inherent variability in not only the formulation and recipes of the different resin grades, but also the variation that must exist in the polymerization and stripping of different resin grades in order to meet established resin specifications and end-user requirements. The final rule requires that compliance with the stripped resin limits be demonstrated based on a 24-hour arithmetic average of samples taken every 3 hours for continuous strippers or at the end of each batch for batch strippers. The frequency of resin sampling that is required under the final rule is sufficient to ensure that continuous and batch stripping operations are in continuous compliance with the stripped resin limits.

Therefore, requiring facilities to establish parameters on their stripping operations that must be monitored and maintained to ensure continuous compliance is not practical considering the multitude of operating limits and ranges that would need to be established to cover the production of numerous grades of resin. We further recognize that given the establishment of resin limits at the outlet of the resin strippers, we can allow flexibility in the operation of the strippers while ensuring that the resin limits are being met as the resin exits the stripper. Therefore, we have removed all requirements for continuous parametric monitoring of resin strippers from the final rule.

Comment: One commenter contended that a work practice standard is needed for startup periods for the resin slurry strippers. The commenter does not normally take samples for vinyl chloride within 2 hours of a PVC resin slurry stripper startup, but provided a table of information in their comment letter on four investigations undertaken on different days at different plants. The commenter stated that the first three products tested were relatively easy-to-strip grades, while the fourth product was a relatively hard-to-strip pipe-grade resin. The commenter stated that a relatively short startup vinyl chloride spike is present for easy-to-strip resins, but that for the higher volume pipe grade resin with lower porosity (hard-to-strip), the startup spike lasted at least 1 hour and, possibly, 2 hours. The commenter contended that, based on the variability seen in the slurry stripper startups, it is not possible to set a single numerical limit for startup conditions. Therefore, the commenter requested that the EPA establish a work practice allowing a 2-hour time period following startup when no vinyl chloride samples shall be used for compliance purposes.

Response: The resin limits apply at all times including during periods of normal operation and during periods or startup and shutdown. The variability incorporated into the stripped resin limit calculation for each resin type will sufficiently allow for periods of concentration spiking during periods of startup. Compliance with the stripped resin limits is based on a 24-hour arithmetic average of samples taken every 8 hours for continuous strippers or at the end of each batch for batch strippers. For a continuous stripper, samples must be taken every 8 hours or for each grade, whichever is more frequent. We believe the 24-hour averaging time and 8-hour sampling frequency will allow sources to demonstrate compliance with the stripped resin limits. Finally, section 112(h) of the CAA authorizes the EPA to set work practice standards in lieu of numerical emission limits only where it is not feasible to prescribe or enforce a numerical emission standard. This statutory threshold is further defined to

mean that HAP cannot be emitted ''through a conveyance designed and constructed to emit or capture such pollutant'' or ''the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.'' The commenter did not provide any information to satisfy this statutory prerequisite to support the application of work practice standards to startup periods for resin strippers. Therefore, we disagree that a work practice should be established in lieu of a numerical emission limit for resin strippers during periods of startup.

4. Wastewater

Comment: Several commenters contended that owner/operators should be exempt from the proposed initial and continuous vinyl chloride and HAP sampling requirements if they can document, through process knowledge or historical sampling data, that no HAP are present in the wastewater stream. The commenters proposed that all documentation would be available to an inspector. Commenters contended that the HON at 40 CFR 63.144(b) and (c) (subpart G) allows for the use of sampling, bench scale data and/or process knowledge to determine concentration and flow rate of a wastewater stream.

Response: In the final rule, we are requiring that for any process wastewater streams that are not being treated prior to being discharged from the PVCPU, facilities must sample those streams and determine if treatment is required to meet the process wastewater limits for vinyl chloride and total non-vinyl chloride organic HAP. If, after the initial sampling, treatment is not required to meet the limits, then those streams must only be retested annually or when a process change is made. The final rule contains limits based on the MACT floor for total non-vinyl chloride organic HAP. The total HAP concentration and flow rate cutoffs were included as a beyond-the-floor option at proposal in an effort to make the wastewater requirements consistent with other chemical sector rules, because the option was cost-effective. Based on our evaluation of the total non-vinyl chloride organic HAP limits, we determined that the 1,000 ppmw threshold for total organic HAP, above which facilities would have been required to comply with the HON wastewater provisions, was not appropriate for the final rule as all streams must meet a limit for vinyl chloride and total non-vinyl chloride organic HAP, that, when combined (*i.e.,* 116.8 ppmw for existing sources and 0.30 ppmw for new sources), is much lower than the previously proposed 1,000 ppmw threshold. We, therefore, removed the total HAP flow rate cutoff and concentration cutoff, and flow rate determination requirements from the final rule. Annual re-sampling and testing of untreated streams is not overly burdensome and provides more reliable results than engineering estimates or process knowledge on which to determine whether at some point in the future, an untreated stream must be treated to meet applicable limits.

Comment: Some commenters stated that the EPA should provide exemptions for certain safety-related streams. The commenters contended that certain events may occur at a PVCPU that require the release and subsequent discharge of water, such as a fire or the use of eye wash stations and safety shower, and these activities have little to no chance of emitting HAP. The commenters stated that safety-related streams are identified in HON at 40 CFR 63.100(f)(1) through (11). In the absence of such exemptions, the commenters concluded that facility employees will be confused or hesitant because of a compliance dilemma at the worst possible time.

Several commenters asked for clarification about which in-process wastewater streams require control and treatment. Several commenters contended that maintenance wastewater streams should be regulated independently of process wastewater. The commenters stated that the capture of maintenance wastewater emissions is infeasible and thus warrants use of a work practice standard. The commenters stated that there are no known practical and effective methods for collecting and controlling fugitive emissions from a wastewater stream, which can vary considerably in HAP concentration and flow rate. Several commenters argued that maintenance wastewater should not have a prescribed limit, but should have work practices to remove residuals prior to generation. A commenter stated that maintenance activities are non-routine, highly variable activities that require the purging, clearing and cleaning of equipment in preparation for safe handling by personnel. Some commenters added that maintenance wastewaters include dilute concentrations of HAP because industry takes efforts to remove residual HAP before equipment is flushed. The commenters concluded that quantifying a concentration to establish compliance with a limit would be extremely difficult if not impossible, because the ''acceptable'' level would be based on the specific circumstances involved. The commenters added that other MACT standards like the HON and MON provide a separate management option for maintenance or turnaround wastewater.

The commenters contended that streams should be clearly defined by the point of determination (POD) and not the proposed point of generation (POG). The commenters added that the POG concept is not defined or explained within either the VCM NESHAP or the proposed PVC MACT. Other MACT standards related to chemical process industries provide for sampling at the POD and have exemptions in the rule related to the definition of wastewater.

Response: We agree with the commenters that it is not feasible to collect wastewater resulting from maintenance activities at PVC facilities such that it could be contained and routed to a wastewater treatment system. We disagree that maintenance wastewater generation activities are non-routine. We maintain that maintenance activities at PVC facilities are routine, but those activities result in the generation of wastewater in such a manner that it cannot be collected, enclosed and routed to a wastewater treatment system or otherwise managed in a controlled or enclosed system as process wastewater can. PVC facilities reported a variety of different work practices used for maintenance wastewater, but did not provide sufficient description or information necessary to determine the effectiveness of any one work practice alone or relative to other work practices. Furthermore, these streams can vary considerably in HAP concentration. Therefore, it is not feasible to prescribe or enforce an emission standard for maintenance wastewater and maintenance wastewater streams should be regulated separately from process wastewater. In the final rule, maintenance wastewater is not subject to the same requirements as process wastewater but instead is subject to work practice standards. We are incorporating into the final rule the maintenance wastewater work practice requirements used in other EPA standards, such as the HON. These work practice standards include preparing a description of maintenance procedures for management of wastewater generated from the emptying and purging of equipment in the process during temporary shutdowns for inspections, maintenance, and repair and during periods which are not shutdowns. As in the HON, facilities can effectively implement these work practices to prevent or mitigate the

emissions of HAP from wastewater generated during maintenance activities. We also agree that certain safety related activities that may generate a wastewater stream not be subject to the requirements for process wastewater. Therefore, we have added separate requirements in the final rule for maintenance wastewater streams. Furthermore, we have clarified that certain safety-related streams are not considered wastewater. These two revisions in the final rule are consistent with wastewater provisions in other MACT standards, such as the HON and MON. We have also removed all terminology related to ''point of generation'' and ''point of determination.'' These terms created confusion for determining compliance with the standards. The final rule includes simplified language regarding where process wastewater streams must be tested to determine if treatment is required to meet the process wastewater limits. In the final rule, we are requiring that wastewater be measured immediately as it leaves a piece of process equipment and before being mixed with any other process wastewater stream. We have also clarified that the limits must be met before the process wastewater stream is discharged from the PVCPU.

5. Heat Exchange Systems

Comment: Several commenters stated that the proposed heat exchange systems monitoring methods are more restrictive than other 40 CFR part 63 NESHAP. The commenters suggested that the EPA broaden proposed leak testing and compliance requirements for cooling water supply (in closed-loop recirculation systems) and required heat exchange systems. The commenters identified several alternate compliance methods: (1) EPA Method 107, which focuses on vinyl chloride, not HAP, be included as a compliance option. Commenters contended that EPA Method 107, which is conducted on-site, allows for fast results (24 hours, while EPA SW–846 Method 8021B tests can take a week) and quicker repairs to any leaking exchange systems; (2) EPA SW–846 Method 8260B, which commenters said should replace EPA SW–846 Method 8021B. Commenters stated that EPA SW–846 Method 8260B has a more comprehensive target chemical list; test laboratories no longer have the equipment or personnel capable of performing EPA SW–846 Method 8021B; and EPA SW–846 Method 8021B is not incorporated by reference in 40 CFR 63.14 as is the TCEQ Modified El Paso Method.

Response: The leak action level for heat exchange systems is not an independent limit on emissions, but rather is used as an indicator that there may be a leaking component and as a trigger level to take further action to remedy the leak. As discussed in the preamble to the proposed rule, the leak action level and associated repair requirements for heat exchange systems are work practice standards under section 112(h) of the CAA and not numerical emission limits, similar to requirements applicable to equipment leaks. The proposed leak action levels and monitoring frequencies were established based on the information provided to us in responses to our August 21, 2009, CAA section 114 survey and testing request of the PVC industry and subsequent requests by us of the industry requesting clarification on heat exchange system monitoring practices used in the industry.

At proposal, we required measurement of total strippable VOC for detecting leaks of HAP into the cooling water, which are ultimately emitted downstream. Based on comments received, we have added an option for facilities to monitor their heat exchange systems using EPA Method 107, for vinyl chloride to monitor for leaks of total strippable VOC into cooling water. Vinyl chloride is the primary raw material in the manufacture of PVC and is present in all process streams. Therefore, if either total strippable VOC or vinyl chloride leaks are detected, repair of the leaks will control the leaks for all HAP. The process streams are cooled by cooling water in non-contact heat exchangers. If there is a leak of a process stream into the cooling water, for example, through a broken heat exchanger tube bundle, vinyl chloride concentrations would increase in the cooling water. A leaking process stream that contains other HAP in addition to vinyl chloride would also leak those other HAP into the cooling water. In a recirculating heat exchange system that contains a cooling tower, the cooling water is exposed to the atmosphere at the cooling tower. It is sufficient to establish a leak action level for heat exchange systems at PVC facilities based on a level of vinyl chloride that, if detected in the cooling water, would indicate a leak of the process stream and all HAP contained in that process stream into the system. Therefore, we determined that for this industry, vinyl chloride is also an appropriate indicator to determine if there is a leak in a heat exchange system. Furthermore, EPA Method 107 is an established method for the analysis of vinyl chloride in wastewater samples.

Our approach at proposal to determining a MACT floor for heat exchange systems was to calculate the average (arithmetic mean) leak action level from the five reported lowest leak action levels to determine the floor for existing sources, and the single lowest leak action level to determine the floor for new sources. Similarly, we looked at the range of monitoring frequencies and selected the median frequency from nine heat exchange systems for existing sources and the most frequent monitoring period for new sources. We have revised the leak action level at the MACT floor for existing sources based on the median leak action level for total strippable VOC from the top five lowest leak action levels reported. Similar to our approach to determining the MACT floor for equipment leaks, it is appropriate to evaluate the median of leak action levels instead of calculating the arithmetic mean. We determined that the leak action level for total strippable VOC for the existing source MACT floor is 50 ppbw. The lowest leak action level reported was also 50 ppbw and represents the revised MACT floor leak action level for new sources. Therefore, in the final rule, the leak action level for total strippable VOC in cooling water is 50 ppbw with monthly monitoring, for both existing and new sources. The methods used by facilities to monitor for VOC include the TCEQ Modified El Paso Method and EPA Method 624. In the final rule, we have revised the cooling water monitoring method from EPA SW–846 Method 8021B to EPA Method 624, but we have not changed the option to monitor using the TCEQ Modified El Paso Method.

To develop a leak action level for vinyl chloride, we looked at the leak action levels and monitoring frequencies reported by facilities that perform vinyl chloride monitoring using EPA Method 107. We determined a vinyl chloride leak action level based on the median leak action level reported by facilities that monitor for vinyl chloride. Those leak action levels range from 50 ppbw to 5,000 ppbw with monitoring frequencies between monthly and quarterly. To determine the MACT floor level of control, we conducted an analysis similar to the analysis conducted for equipment leaks; an analogous emission source that is fugitive in nature where control is a work practice and not an emission limit. The existing source MACT floor level of control for equipment leaks was calculated using the average (median) level of control of work practices at the best-performing five sources. We

determined that the median leak action level for heat exchange systems was 50 ppbw. The MACT floor analysis results in a leak action level for vinyl chloride for existing sources of 50 ppbw with monthly monitoring. The lowest leak action level reported was also 50 ppbw and represents the revised MACT floor for new sources. Therefore, in the final rule, the leak action level for total strippable VOC in cooling water is 50 ppbw with monthly monitoring, for both existing and new sources. This analysis is documented in the memorandum, *Revised Maximum Achievable Control Technology (MACT) Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* and is available in the docket.

6. Other Emission Sources

Comment: One commenter stated that in the preamble to the proposed rule, the EPA has indicated that for ''other emission sources,'' requirements from part 61 NESHAP constituted the MACT floor level of control and that, in turn, was used to set the proposed limits, which requires complying with a vinyl chloride percent reduction. However, the commenter added, the rule requires sources to comply with a total HAP percent reduction, while the preamble only requires sources to comply with a vinyl chloride percent reduction. The commenter contended that sources have been using a method for sampling and detecting vinyl chloride for years, and measuring total HAP will introduce an additional layer of complexity to the compliance requirement. The commenter requested that the EPA review the rule language and make it consistent with the preamble language by replacing total HAP with vinyl chloride.

Response: In the final rule, as in the proposed rule, we are requiring work practices that require venting the emissions from process components and equipment through a closed vent system to a control device prior to opening to minimize emissions. This is typically achieved by sweeping the component or equipment several times with nitrogen to reduce the concentration of HAP in the vapor space of the component or equipment. These work practices will reduce emissions of all HAP present in the component or equipment prior to opening. In the final rule we are setting standards for this emission source based on vinyl chloride because the part 61 NESHAP, which constitutes the MACT floor level of control for reactor and equipment openings, requires work practices to specifically control vinyl chloride emissions. It is appropriate to continue to set the standards based on vinyl chloride because it will always be present at this emission point, and controlling it will control all other HAP.

Comment: Commenters stated that gasholders should not be regulated as storage vessels, but should be considered as surge control vessels, due to their process functions. Specifically, commenters contended that based on the CAA liquid storage definitions and associated requirements, gasholders do not meet the definitions of ''fixed roof'' storage vessel or ''floating roof'' storage vessel and, thus, recommended that gasholders be defined as surge control vessels in 40 CFR 63.12005. One commenter also agreed with the EPA that gasholder seal water should not be regulated as wastewater.

The commenters stated that it is impractical to measure gasholder fugitive emissions or route them to a stack, thus work practices should be used to control these gasholder emissions. One commenter recommended that the EPA regulate PVC MACT gasholders in the same way as other surge control vessels at 40 CFR part 63, subpart H. The commenters stated that the PVC MACT standard for gasholders should be a combination of equipment control and procedural requirements. The commenter described studies undertaken to determine the feasibility of certain control technologies like the use of floating objects to cover the water seal, finding that though these approaches can reduce emissions, they have drawbacks as well, and thus should be used in combination with procedural standards.

One commenter provided information related to emissions and controls for gasholders, as requested by the EPA in the preamble. The commenter stated that gasholders are important for safety and stability of the operation in the PVC process, with the process equipment specifically designed around gasholders to maintain safe pressure and gas flow to the closed vent and vinyl chloride recovery systems. According to the commenter, any changes to the design of the existing system could compromise safety procedures and would impose a burdensome capital investment. Finally, the commenter recommended the use of floating objects, such as balls, hallow disks, an oil layer or rubber mats, in the gasholder water seal for emissions reductions, because it is a flexible system that provides a consistent degree of control without creating additional waste management concerns.

Response: In the proposed rule, we requested comment on techniques to control emissions from gasholders. We reviewed the information submitted by the industry and have concluded that it is not feasible to prescribe or enforce an emission standard for emissions of vinyl chloride or other HAP from the water seal and the outside of the floating bell on gasholders. For PVC facilities that have gasholders, they are an integral part of the vinyl chloride recovery process and are connected to the closed vent system that collects and routes process vent emissions from process components to the vinyl chloride recovery system. After vinyl chloride recovery, any remaining process vent gasses are routed through the closed vent system to a control device. There are, however, emissions from gasholders that originate from the water seal and the outer portion of the floating bell that are fugitive in nature. The water seal contacts vinyl chloride and other HAP contained in the gasholder, and thus, there is the potential to emit HAP from the water in the gasholder seal and the thin film of water that accumulates on the outer surface of the floating bell. It is not technically practicable to route these emissions into or through a conveyance designed and constructed to capture and control them to an enforceable emission limit. Therefore, in the final rule, we are promulgating a work practice and equipment standard consistent with the provisions of section 112(h) of the CAA. In the final rule, we are requiring facilities to install and maintain floating objects on the surface of the gasholder water seal to minimize emissions of vinyl chloride and other HAP. We are also requiring facilities to develop a standard operating procedure for each gasholder to ensure that the floating objects are properly maintained and that emissions are minimized.

G. Initial and Continuous Compliance and Recordkeeping and Reporting

Comment: Three commenters stated that the EPA should remove CDD/CDF CEMS from the rule. The commenters contended that CDD/CDF CEMS technology is not well developed. One commenter stated that an EPA CDD/CDF CEMS study noted that, within the range of 1–10 ng/dscm, TEQ relative accuracy was reported between 23 percent and 75 percent. The commenter contended that the technology would not be useful with such a wide range of relative accuracy at the proposed limit. Another commenter stated that the technology is not commercially available in the United States. Another commenter indicated that monitors in use are mainly in other countries. Another commenter added that several of the available monitors are not continuous because they are not real

time and require using a third party lab for results.

Response: We agree with the commenter on the availability of CEMS for CDD/CDF. CEMS for CDD/CDF and HCl are still being developed and the EPA does not have specifications for the technology currently. In the final rule, we have removed the requirement for CDD/CDF and HCl CEMS, but have retained them as an option for existing and new sources once performance specifications have been promulgated.

H. Area Sources

Comment: One commenter stated that, if the PVC MACT and GACT are combined, the EPA needs to fully consider the cost of the MACT on area sources and modify the requirements to minimize the burden on area sources. The commenter stated that GACT standards required by CAA section 112(d)(5) are different from MACT standards under CAA section 112(d)(3) and, though the technologies employed in these facilities are similar, the EPA has not performed the required economic analysis in setting GACT. One commenter stated that, given the burdens on reduced workforces at smaller facilities, scaled-back requirements such as reduced stack testing frequency or reduced CPMS requirements are warranted and will have no negative impact on air emissions or compliance at area source facilities. The commenter added that the economic impact of the proposed PVC MACT on area sources makes these measures necessary for the facilities to remain financially viable.

One commenter stated that the proposed GACT standard for process vents for vinyl chloride and CDD/CDF are not appropriate or cost effective, based on small emissions reduction and high cost calculated in the EPA's analysis. The commenter added that these limits are redundant since total organic HAP includes vinyl chloride and CDD/CDF and, thus, they contended that the vinyl chloride standards should be eliminated.

One commenter made several comments regarding the pollutants proposed for regulation for area sources under GACT. The commenter stated that regulation of ''total HAP'' and ''CDD/CDF'' under the area source GACT standard is not warranted because, although the agency has discretion to regulate all urban HAP for area sources, total HAP is not an urban HAP (they contend that classifying total HAP as an urban HAP would make the list meaningless), and CDD/CDF is not a HAP at all (thus, the EPA has no authority to regulate CDD/CDF under CAA section 112). Furthermore, the commenter contended that control technologies already used by CertainTeed to control vinyl chloride also achieve control of individual organic HAP. For CDD/CDF, the commenter pointed out that the EPA's own analysis showed that the proposed regulation would achieve little, if any, reductions. The commenter concluded that there is no benefit to establishing a standard for total HAP or CDD/CDF. The commenter added that the regulation of HCl under the area source GACT standard is not warranted either. They contended that, because the EPA has the discretion to revise the GACT standard only as necessary, the EPA must first determine that regulation of HCl is necessary. Instead, the commenter stated that the EPA seeks to regulate HCl emissions and suggests that such regulation is ''appropriate'' simply based on the fact that such emissions ''are generated.'' In light of this, the commenter concluded that the proposed GACT standards for HCl should not be finalized.

Response: We proposed GACT standards for PVC area sources based on the proposed MACT standards for major sources. For the final rule, we have updated our analysis of area source GACT, considering comments received, including our analysis of cost considerations. Our revised GACT analysis assesses each PVC emission point (*e.g.,* process vents, stripped resin, equipment leaks, etc.) individually, for both existing and new sources, to determine the appropriate level of control, considering cost and emission reduction. The GACT analysis was conducted for the same subcategories as major sources.

Section 112(d)(5) of the CAA authorizes the EPA to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices [GACT] by such sources to reduce emissions of hazardous air pollutants.'' We issued such standards for PVC area sources in 2007.

Under CAA section 112(d)(6), we are required to ''review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.'' With this rulemaking, we are fulfilling our obligation to review and revise, as necessary, the PVC Production area source standards. The 2007 NESHAP for PVC Production area sources (40 CFR part 63, subpart DDDDDD) are based on GACT. The area source NESHAP set emission limits only for vinyl chloride, which was the pollutant for which we needed the PVC production area source category to meet our 90-percent obligation in CAA sections 112(c)(3) and (k)(3)(B). In this final rule, we are tightening emission standards for vinyl chloride under CAA section 112(d)(6). We are also establishing emission standards for CDD/CDF and THC for process vents (with an alternative compliance limit for total organic HAP) and total non-vinyl chloride organic HAP for stripped resins and wastewater under CAA section 112(d)(5). We are also requiring generally available management practices for PVC area sources under CAA section 112(d)(5). We are not setting separate limits for HCl from process vents at PVC area sources.

In this final rule, we have determined that area source emission limits should be set for THC as a surrogate for organic HAP, along with limits for CDD/CDF and vinyl chloride, for process vents, and for total non-vinyl chloride organic HAP and vinyl chloride for stripped resins and process wastewater. We discussed earlier in this preamble our specific reasons for establishing emissions limits for these pollutants from PVC facilities. We also determined that it is appropriate to provide a total organic HAP limit as an alternative to the THC limit for process vents at area sources, just as we did for PVC major sources. We disagree with the commenter who states that the EPA should not establish a total organic HAP limit (or total non-vinyl chloride organic HAP limit for stripped resins and process wastewater) because total organic HAP is not an urban HAP. We note that the commenter concedes that the agency has discretion to regulate all urban HAP for area sources. The commenter also does not dispute that PVC facilities emit several organic urban HAP, beyond vinyl chloride.

Moreover, as the EPA has explained in other area source rules, the agency has authority to regulate all HAP, not only urban HAP, from area source categories listed pursuant to CAA section 112(c)(3). See, *e.g.,* Chemical Manufacturing Area Sources NESHAP proposed rule, 73 FR 58352, 58358, October 6, 2008, and final rule, 74 FR 56008, 56017–18, October 29, 2009).[4]

[4] CAA section 112(d)(5) states that for area sources listed pursuant to CAA section 112(c), the Administrator may, in lieu of CAA section 112(d)(2) ''MACT'' standards, promulgate standards or requirements ''applicable to sources'' which provide for the use of GACT or management practices ''to reduce emissions of hazardous air pollutants.'' This provision does not limit the agency's authority to regulating only urban HAP

We are setting emission limits for total organic HAP for process vents (and total non-vinyl chloride organic HAP for stripped resin and process wastewater) for several reasons. First, the compliance measures that we expect sources to adopt to meet the final limits are equally effective at controlling emissions of non-urban organic HAP as urban organic HAP. Second, there is little, if any, additional cost for implementing those compliance measures at PVC process vents, stripped resin and process wastewater. Third, we are applying the standards to total organic HAP or total non-vinyl chloride organic HAP because many of the area sources emit a significant amount of non-urban organic HAP in addition to urban organic HAP, for example, the nationwide ratio of total organic HAP to urban organic HAP at affected area sources is more than 3 to 1. Finally, we believe our approach is consistent with certain industry comments that support using total organic HAP limits as the best means of achieving HAP emission reductions under CAA section 112(d) without fundamentally changing the PVC product being produced for sale by these facilities.

We have determined that area sources will not have to install different controls or implement different compliance strategies and will incur little, if any, additional cost to comply with the standards for total organic HAP (and total non-vinyl chloride organic HAP). Moreover, the commenter does not refute that the expected compliance measures in the PVC industry are equally effective at removing non-urban organic HAP, as urban organic HAP. For all of these reasons, we are applying these standards to process vents, stripped resin and process wastewater at PVC area sources. In addition, the comment that we should limit area source standards to only the urban organic HAP conflicts with other industry comments advocating THC as a surrogate. As we explained previously in preamble section V.C, THC is a reasonable surrogate for controlling all organic HAP from PVC process vents. However, while control of THC ensures control of all organic HAP (as does the total organic HAP alternative), THC cannot differentiate between organic HAP that is urban HAP and organic HAP that is not urban HAP. The commenter's statement further conflicts with our determination that a total non-vinyl chloride organic HAP emission limit is an appropriate limit for stripped resins and process wastewater (see discussion at preamble section V.C).

We disagree with the commenter's statement that CDD/CDF is not a HAP. We are authorized to regulate the CDD/CDF class of HAP. While dibenzofuran and 2,3,7,8-TCDD are identified by name as HAP in CAA section 112, all CDD/CDF are polycyclic organic matter and, as such, we have the authority to regulate these compounds.

We disagree with the commenter who stated reduced stack testing frequency or reduced CPMS requirements are warranted for area sources. We believe that these requirements are necessary to demonstrate compliance with the emission limits regardless of the size of the facility or the magnitude of emissions. Therefore, the same testing and monitoring requirements apply to both major and area sources. Since the PVC-only and PVC-combined process vent area source limits are based on the facility in each subcategory, no additional controls would be needed and no emission reductions would occur. Monitoring, recordkeeping and reporting would be the only costs. (See Tables 16 and 17 of this preamble.) We agree with the commenter that total organic HAP includes vinyl chloride and dioxins and furans, but we disagree that vinyl chloride standards should be eliminated, since vinyl chloride emissions limits already apply to PVC facilities under 40 CFR part 61, and they serve as a check on a unit's recovery process efficiency and since physical measurement of vinyl chloride from process vents occurs only every 5 years. In determining what constitutes GACT for this final rule, we considered the control technologies and management practices that are generally available to PVC area sources by examining relevant data and information, including information collected from PVC area sources. We also considered the control measures applicable to PVC major sources to determine if the control technologies and management practices are transferable and generally available to area sources. As part of the GACT determination, we considered the costs and economic impacts of available control technologies and management practices on area sources which are documented in the technical memorandum, *Generally Achievable Control Technology (GACT) Analysis for Area Sources in the Polyvinyl Chloride and Copolymers (PVC) Production Source Category, which is available in the docket.*

Under CAA section 112(d)(5), the EPA can promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices [GACT] by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the analogous source category to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source categories at issue.

We determined new and existing area source standards for each emission point by evaluating the current (also referred to as baseline) level of control and control options beyond the current level of control.

For each emission point, we determined the current level of control for existing area sources, incorporating variability. If no area source currently exists in the category or subcategory, the least controlled major source, in each subcategory for each regulated pollutant, as applicable, was analyzed as the baseline level of control for GACT. The only two existing PVC area sources that we are aware of produce bulk resin and suspension resin, respectively. No existing area sources produce dispersion resin, suspension blending resin or copolymer resin. However, if an existing PVC major source is able to become a synthetic area source, *e.g.,* by taking a federally enforceable limit on its potential to emit, before the first compliance date of this rule, it would be subject to area source rather than major source PVC NESHAP requirements. Therefore, in order to develop GACT standards for other stripped resin subcategories, we determined the baseline level of control for these subcategories in which there is

emissions for which the category was listed under CAA section 112(c)(3).

no existing area source to be equivalent to that of the least controlled major source, *i.e.,* for the dispersion, suspension blending and copolymer subcategories for stripped resins. For the suspension blending and copolymer subcategories, there is only one major source. So for these subcategories of stripped resin, the level of control of the least controlled major source was the same as the major source MACT floor level of control. In addition, gasholders are the only emission source that are located at major sources, but not located at area sources. Therefore, we determined that the baseline level of control for gasholders is equivalent to that of the least controlled PVC major source with a small gasholder. We believe that all future possible existing area sources should be able to achieve these levels of control, as we predict that most, if not all, such sources will be major sources that limit their potential to emit to levels below the major source thresholds before the first substantive compliance date of this rule. See 42 U.S.C. 112(a)(1); 40 CFR 63.2 (definition of ''potential to emit''). For equipment leaks, heat exchange systems and storage vessels, we determined that the level of control was the same as the major source work practice standards.

We are also establishing new source GACT. We have data from the two existing area source facilities, and those facilities form the basis of our new source GACT analysis. For the PVC-combined process vents, PVC-only process vents, bulk resin and suspension resin subcategories, we have data from one area source facility. For the other emission points (except for dispersion resin, suspension blending resin and copolymer resin discussed in the previous paragraph) both facilities are equivalent in terms of their current level of control. For equipment leaks, the CertainTeed Lake Charles facility and the OxyVinyls Deer Park facility both comply with 40 CFR part 61, subpart V. Therefore, we find that the level of control for new area sources is equivalent to the level of control for existing area sources.

Control options beyond the current or baseline level of control for existing sources were analyzed on a basis of cost effectiveness. We determined the emission reductions, if any, associated with existing PVC area sources meeting levels of control more stringent than the current or baseline level of control. We then estimated the annual cost of testing, monitoring, recordkeeping and reporting, and any operating and maintenance costs associated with control devices required to meet the more stringent control levels. We developed a cost- effectiveness estimate by dividing the annual cost of the more stringent control level with the annual emission reduction. The control options analyzed are as follows:

For PVC-only and PVC-combined process vents at new and existing area sources, for each subcategory, we analyzed two additional control options beyond the current level of control. The first option was requiring the current level of control, as discussed above, and the testing and monitoring requirements for process vents at existing major sources. The same types of controls are used at both existing area and major sources. The testing and monitoring necessary to ensure compliance with the emission limits and to ensure proper operation of the control device are the same regardless of the size of the control device. The second option was requiring meeting the emission limits for existing major sources in addition to the testing and monitoring requirements for existing major sources.

For PVC-only process vents at new and existing area sources, we determined that the second option was not cost effective; instead, we concluded that the first option was appropriate. We determined that the major source testing and monitoring requirements are appropriate and necessary to ensure that area sources are in compliance with the process vent standards, whether those required standards are the current level of control or major source standards. Therefore, we are requiring PVC-only and PVC-combined process vents at new and existing area sources to comply with GACT by meeting the current level of control and the testing and monitoring requirements for existing major sources.

For stripped resins at new and existing PVC area sources, we analyzed two additional control options beyond the current or baseline level of control for each subcategory. The first option was requiring the current or baseline level of control and the testing and monitoring requirements for stripped resins at existing major sources. The second option was meeting the emission limits for existing major sources in addition to the testing and monitoring requirements for existing major sources. For the bulk and suspension resin subcategories, we are setting the stripped resin limits for new and existing area sources equivalent to their current level of control, accounting for variability, and testing and monitoring requirements for major sources for each stripped resin subcategory. For dispersion resins, GACT is based on the baseline level of control, i.e., the least controlled major source and limits were developed for dispersion resins based on data from that source. For the suspension blending and copolymer resin subcategories, we are requiring the emission limits for existing major sources since there was only one source in each of these subcategories (*i.e.,* the baseline level of control was the level of control the existing major source) in addition to the testing and monitoring requirements for existing major sources. Similar to process vents, we determined that it is appropriate to require testing and monitoring requirements for major sources to ensure compliance.

For process and maintenance wastewater at new and existing PVC area sources, we analyzed three additional control options beyond the current baseline. The first option was requiring the current level of control and the testing and monitoring requirements for wastewater at existing major sources. The second option was meeting the emission limits for existing major sources in addition to the testing and monitoring requirements for wastewater at existing major sources. The third option was meeting the emission limits for new major sources in addition to the testing and monitoring requirements for wastewater at existing major sources. We determined that the second option of emission limits for existing major sources was less stringent than (i.e., not beyond) the current baseline for new and existing area sources. We determined that the third option of emission limits for new major sources were not cost effective for new or existing PVC area sources. Therefore, we are requiring process and maintenance wastewater at new and existing area sources to comply with GACT by meeting the current baseline and the major source testing and monitoring requirements. Similar to process vents, we determined that it is appropriate to require testing and monitoring requirements for major sources and necessary to ensure that area sources are in compliance with the process and maintenance wastewater standards.

For equipment leaks and for heat exchangers at new and existing PVC area sources, we analyzed one additional control option beyond the current level of control. The additional option was meeting the emission standards for equipment leaks and for heat exchangers at existing major sources. We determined that the emission standards for equipment leaks and heat exchangers at existing major sources are cost effective for new and existing area sources. Therefore, we are requiring new and existing area sources to comply with GACT by meeting the

equipment leak and heat exchanger standards at existing major sources.

For storage tanks at new and existing PVC area sources, we analyzed one additional control option beyond the current baseline. The additional option was meeting the emission standards for storage tanks at existing major sources. We determined the emission standards for storage tanks at existing major sources are cost effective for new and existing area sources. Therefore, we are requiring new and existing area sources comply with GACT by meeting the emission standards for existing major sources.

For other emission sources, the current level of control is emission standards for reactor and other equipment openings equivalent to the requirements in 40 CFR part 61, subpart F, which is also equivalent to the major source level of control. We analyzed an additional option for gasholders equivalent to the emission standards for gasholders at major sources. The option was determined to be cost effective for new and existing area sources. Therefore, we are requiring that new and existing area sources comply with GACT by meeting the emission standards for gasholders and reactor openings at major sources.

Tables 16 and 17 present a summary of the control options analysis for new and existing area sources.

TABLE 16—SUMMARY OF CONTROL OPTION ANALYSIS FOR EXISTING AREA SOURCES

Emission point	Control option analyzed beyond current level of control	Incremental annual cost of compliance ($/yr)	Emission reductions (tpy—total HAP)	Cost effectiveness ($/ton total HAP)
PVC-only process vents	Major Source Testing and Monitoring	10,890	0	[a]
	Existing Major Source emission standards, monitoring and testing	180,245	0.257	701,814
PVC- combined process vents.	Major Source Testing and Monitoring	10,890	0	[a]
	Existing Major Source emission standards, monitoring and testing	10,890	0	[a]
Stripped resins (all subcategories).	Major Source Testing and Monitoring	10,615	0	[a]
	Existing Major Source emission standards, monitoring and testing	10,615	0	[a]
Process and maintenance wastewater.	Major Source Testing and Monitoring	19,777	0	[a]
	Existing Major Source emission standards, monitoring and testing	19,777	0	[a]
	New Major Source emission standards, monitoring and testing	2,996,390	12.2	245,516
Equipment leaks	Existing Major Source emission standards, monitoring and testing	72,525	9.29	7,807
Heat exchangers	Existing Major Source emission standards, monitoring and testing	25,529	15.1	1,691
Other emission sources	Existing Major Source emission standards, monitoring and testing	3,108	0	[b] $4,921
Storage tanks	Existing Major Source emission standards, monitoring and testing	3,108	0	[c] 2,000–12,000

[a] Option does not result in emission reductions; therefore, a cost effectiveness was not applicable.

[b] Emission reductions and costs were calculated for retrofitting a model small gasholder with floating objects to reduce emissions from the gasholder water seal. The results of the analysis showed that cost effectiveness was equal to $4,921 per ton of vinyl chloride reduced. We are not aware of any gasholders operated at existing PVC area sources; therefore no emission reductions are shown.

[c] Emissions reductions and costs were calculated for retrofitting 40 CFR part 63, subpart WW controls on model fixed roof tanks meeting 40 CFR part 60, subpart Kb vapor pressure and size parameters. The results of the analysis showed that cost effectiveness ranged from $2,000 to $12,000 per ton of HAP reduced by this option depending on the number of turnovers assumed. Based on information submitted by PVC production facilities, no storage vessels from affected sources that meet the capacity levels storing materials that meet the vapor pressure levels were identified. Therefore, it was assumed that no storage vessels meeting capacity levels storing materials that meet the vapor pressure levels would be constructed at a new source.

$/yr—dollars per year.

tpy—tons per year.

$/Ton Total HAP—dollars per ton of total HAP.

TABLE 17—SUMMARY OF CONTROL OPTION ANALYSIS FOR NEW AREA SOURCES

Emission point	Control option analyzed beyond current level of control	Incremental annual cost of compliance ($/yr)	Emission reductions (tpy—total HAP)	Cost effectiveness ($/ton total HAP)
PVC-only process vents	Major Source Testing and Monitoring	10,890	0	[a]
	Existing Major Source emission standards, monitoring and testing	180,245	0.257	701,814
PVC-combined process vents.	Major Source Testing and Monitoring	10,890	0	[a]
	Existing Major Source emission standards, monitoring and testing	10,890	0	[a]
Stripped resins (all subcategories).	Major Source Testing and Monitoring	10,615	0	[a]
	Existing Major Source emission standards, monitoring and testing	10,615	0	[a]
Process and maintenance wastewater.	Major Source Testing and Monitoring	9,888	0	[a]
	Existing Major Source emission standards, monitoring and testing	9,888	0	[a]
	New Major Source emission standards, monitoring and testing	1,988,368	8.91	223,169
Equipment leaks	Existing Major Source emission standards, monitoring and testing	36,263	4.64	7,807
Heat exchangers	Existing Major Source emission standards, monitoring and testing	12,764	11.4	1,117
Other emission sources	Existing Major Source emission standards, monitoring and testing	3,032	0.616	4,922

TABLE 17—SUMMARY OF CONTROL OPTION ANALYSIS FOR NEW AREA SOURCES—Continued

Emission point	Control option analyzed beyond current level of control	Incremental annual cost of compliance ($/yr)	Emission reductions (tpy—total HAP)	Cost effectiveness ($/ton total HAP)
Storage tanks	Existing Major Source emission standards, monitoring and testing	1,554	0	[b] 2,000–12,000

[a] Option does not result in emission reductions; therefore, a cost effectiveness was not applicable.
[b] Emissions reductions and costs were calculated for retrofitting 40 CFR part 63, subpart WW controls on model fixed roof tanks meeting 40 CFR part 60, subpart Kb vapor pressure and size parameters. The results of the analysis showed that cost effectiveness ranged from $2,000 to $12,000 per ton of HAP reduced by this option depending on the number of turnovers assumed. Based on information submitted by PVC production facilities, no storage vessels from affected sources that meet the capacity levels storing materials that meet the vapor pressure levels were identified. Therefore, it was assumed that no storage vessels meeting capacity levels storing materials that meet the vapor pressure levels would be constructed at a new source.
$/yr—dollars per year.
tpy—tons per year.
$/Ton Total HAP—dollars per ton of total HAP.

A detailed discussion of these options and the cost and impacts estimated for them is found in the memorandum, *Generally Achievable Control Technology (GACT) Analysis for Area Sources in the Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* and is available in the docket. The results of the GACT analysis are presented in sections VI.A and VI.B of this preamble.

The summary of the area source requirements in the final rule is discussed in section IV.I of this preamble.

Comment: One commenter disagreed with the EPA's proposed equipment leak standards. The commenters stated that the EPA's estimates of baseline fugitive emissions are not valid and not representative of CertainTeed's actual measured fugitive emissions from equipment leaks, because EPA estimated the emissions from equipment leaks by applying average emission factors instead of relying on actual measured data. The commenter contended that because of these estimates, the EPA grossly overestimated the level of fugitive emission reductions. The commenter concluded that because of these overestimations, the cost of the proposed Equipment Leak GACT standards cannot be justified by the potential emission reductions.

Response: At proposal, we estimated baseline emissions and reductions for fugitive emissions from equipment leaks using the 1995 EPA *Protocol for Equipment Leak Emission Estimates.* We agree with the commenter that the 1995 factors yield conservatively high estimates of actual emissions. As part of the technology review required by section 112(d)(6) of the CAA, the EPA has developed new emission factors for equipment leaks that better represent fugitive emissions at chemical manufacturing processes and petroleum refineries. Emission factors were developed using facility data from the MON MACT floor development and the EPA Office of Air Quality and Planning Standards Protocol for Equipment Leak Emission Estimates. (Please refer to the memorandum in the docket titled *Technology Review for Equipment Leaks* for additional information regarding the development of new emission factors for equipment leaks.) Although the commenter provided annual fugitive emissions from equipment leaks for years 2007 through 2010, the commenter did not provide any equipment leak monitoring records, test reports or additional documentation supporting their emission estimates. Therefore, we have chosen to estimate fugitive emissions for both major and area sources using the updated emission factors for consistency across all PVCPU. Using updated emission factors and equipment counts provided by CertainTeed where available, we have updated the baseline emission estimate for fugitive HAP emissions from equipment leaks at the CertainTeed facility to 10 tpy. We have also updated our emissions reduction estimate to 4.64 tpy of HAP as a result of the facility complying with 40 CFR part 63, subpart UU.

We have also updated the total capital investment and total annualized costs of the CertainTeed facility complying with 40 CFR part 63, subpart UU and installing and operating a PRD monitoring system using equipment counts where provided by the facility. The analysis is documented in the memorandum titled *Generally Achievable Control Technology (GACT) Analysis for Area Sources in the Polyvinyl Chloride and Copolymers (PVC) Production Source Category* in the PVC docket. The total cost effectiveness is estimated to equal $6,840 dollars per ton of total HAP; therefore, we are finalizing the requirements for area sources to comply with subpart UU and install and operate a PRD monitoring system.

I. Definitions

The following definitions have been revised since the proposal: Batch process vent, conservation vent, continuous process vent, grade, in HAP service, operating scenario, polyvinyl chloride, PVC production process unit or PVCPU, polyvinyl chloride copolymer, pressure relief device, process vent, solution process, type of resin and wastewater.

We have revised the definition of *batch process vent* to provide consistency with our revisions to the definitions of continuous process vent and process vent and to clarify that batch process vents must be routed to a closed vent system and control device. We also clarify that all emission episodes associated with a batch unit operation are part of the batch process vent. We have also removed language from the definition that excluded certain types of vents or vents from certain components or equipment. In the final rule, *batch process vent* means a vent from a batch operation from a PVCPU through which a HAP-containing gas stream has the potential to be released to the atmosphere except that it is required by this subpart to routed to a closed vent system and control device. Emissions for all emission episodes associated with the unit operation(s) are part of the batch process vent. Batch process vents also include vents with intermittent flow from continuous operations. Examples of batch process vents include, but are not limited to, vents on condensers used for product recovery, polymerization reactors and process tanks.

We have revised the definition of *conservation vent* to provide additional clarification. In the final rule, *conservation vent* means an automatically operated (*e.g.,* weight-loaded or spring-loaded) safety device used to prevent the operating pressure of a storage vessel from exceeding the maximum allowable working pressure of the process component. Conservation vents must be designed to open only when the operating pressure of the storage vessel exceeds the maximum allowable working pressure of the process component. Conservation vents open and close to permit only the intake or outlet relief necessary to keep the storage vessel within permissible working pressures, and reseal automatically.

We have revised the definition of *continuous process vent* to provide consistency with our revisions to the definitions of batch process vent and process vent. We also clarify that continuous process vents must be routed to a closed vent system and control device. In the final rule, *continuous process vent* means a vent from a continuous PVCPU operation through which a HAP-containing gas stream has the potential to be released to the atmosphere, except that it is required by this subpart to routed to a closed vent system and control device and has the following characteristics:

(1) The gas stream originates as a continuous flow from any continuous PVCPU operation during operation of the PVCPU.

(2) The discharge into the closed vent system and control device meets at least one of the following conditions:

(i) Is directly from any continuous operation.

(ii) Is from any continuous operation after passing solely (*i.e.,* without passing through any other unit operation for a process purpose) through one or more recovery devices within the PVCPU.

(iii) Is from a device recovering only mechanical energy from a gas stream that comes either directly from any continuous operation or from any continuous operation after passing solely (*i.e.,* without passing through any other unit operation for a process purpose) through one or more recovery devices within the PVCPU.

We have revised the definition of *grade* to specify resin ''type'' instead of resin ''classification'' since resins are first classified by type, and types are further subdivided into grades. We have also provided an example of a resin grade. In the final rule, *grade* means the subdivision of PVC resin that describes it as a unique resin, *i.e.,* the most exact description of a type of resin with no further subdivision. Examples include LMW suspension resins and general purpose suspension resins.

We have revised the definition of *in HAP service.* In the final rule, *in HAP service* means that a process component either contains or contacts a liquid that is at least 5-percent HAP by weight or a gas that is at least 5 percent by volume HAP, as determined according to the provisions of 40 CFR 63.180(d). For the purposes of this definition, the term ''in organic HAP service,'' as used in 40 CFR 63.180(d), means ''in HAP service.'' The provisions of 40 CFR 63.180(d) also specify how to determine that a process component is not in HAP service.

We have revised the definition of *polyvinyl chloride* to clarify that it includes homopolymers and copolymers. In the final rule, *polyvinyl chloride* means either polyvinyl chloride homopolymer or polyvinyl chloride copolymer.

We have revised the definition of *polyvinyl chloride and copolymers production process unit or (PVCPU)* to remove components that are storage tanks or vessels, heat exchange systems, wastewater and wastewater collection and treatment systems, and add instrumentation systems. Multiple PVCPU may be located at the same affected source and share storage tanks, heat exchange systems and process wastewater treatment systems. Therefore this shared equipment has been removed from the definition of a PVCPU and is now included in the definition of the affected source instead of the PVCPU. In the final rule, *polyvinyl chloride and copolymers production process unit or (PVCPU)* means a collection of process components assembled and connected by hard-piping or duct work, used to process raw materials and to manufacture polyvinyl chloride and/or polyvinyl chloride copolymers. A PVCPU includes, but is not limited to, polymerization reactors; resin stripping operations; resin blend tanks; resin centrifuges; resin dryers; resin product separators; recovery devices; reactant and raw material charge vessels and tanks, holding tanks, mixing and weighing tanks; finished resin product storage tanks or storage silos; finished resin product loading operations; connected ducts and piping; equipment including pumps, compressors, agitators, PRD, sampling connection systems, open-ended valves or lines, valves and connectors and instrumentation systems. A PVCPU does not include chemical manufacturing process units, as defined in 40 CFR 63.101, that produce VCM or other raw materials used in the PVC polymerization process.

We have revised the definition of *polyvinyl chloride copolymer* to clarify that polyvinyl chloride copolymers can also be produced using a suspension blending process. In the final rule, *polyvinyl chloride copolymer* means a synthetic thermoplastic polymer that is derived from the simultaneous polymerization of vinyl chloride and another monomer, such as vinyl acetate. Polyvinyl chloride copolymer is produced by different processes, including, but not limited to, suspension, dispersion/emulsion, suspension blending and solution processes.

We have revised the definition of *pressure relief device* to remove the condition that devices actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not PRD. In the final rule, *pressure relief device* means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process component. A common PRD is a spring-loaded pressure relief valve.

We have revised the definition of *process vent* to provide consistency with our revised definitions of batch process vent and continuous process vent and miscellaneous vent. In the final rule, *process vent* means a vent stream that is the result of the manifolding of each and all batch process vent, continuous process vent or miscellaneous vent resulting from the affected facility into a closed vent system and into a common header that is routed to a control device. The process vent standards apply at the outlet of the control device. A process vent is either a PVC-only process vent or a PVC-combined process vent.

We have revised the definition of *solution processes* to specify that the process produces a polyvinyl chloride copolymer instead of only a polyvinyl chloride resin. In the final rule, *solution process* means a process for producing polyvinyl chloride copolymer resin that is characterized by the anhydrous formation of the polymer through precipitation. Polymerization occurs in an organic solvent in the presence of an initiator where VCM and co-monomers are soluble in the solvent, but the polymer is not. The PVC copolymer is a granule suspended in the solvent, which then precipitates out of solution. Emulsifiers and suspending agents are not used in the solution process. Copolymer resins produced using the solution process are referred to as solution resins.

At proposal, we defined a surge control vessel as part of any continuous operation. However, based on industry comments, gasholders meet the definition of a surge control vessel although gasholders may receive and introduce material into batch processes in addition to continuous processes. Therefore, we have modified the definition of a surge control vessel to reflect the definition in 40 CFR part 63, subpart H and remove the specification that surge control vessels must be used as part of a continuous operation and introduce material into continuous operations. We have, however, modified the definition from 40 CFR part 63, subpart H, to specify that surge control vessels are used within an affected source (and not solely a process unit) since PVCPU may share gasholders. In the final rule, *surge control vessel* means feed drums, recycle drums and intermediate vessels used as a part of any continuous operation. Surge control vessels are used within an affected source when in-process storage, mixing or management of flow rates or volumes is needed to introduce material into continuous operations. Surge control vessels also include gasholders.

We have revised the definition of *type of resin* to include additional resin types identified by commenters after proposal, specifically blending types of resin. In the final rule, *type of resin* means the broad classification of resin referring to the basic manufacturing process for producing that resin, including, but not limited to, suspension, dispersion/emulsion, suspension blending, bulk and solution processes.

We have revised the definition of *wastewater* to mirror definitions in other chemical sector rules, such as the HON, for consistency as several facilities are currently subject to multiple wastewater provisions. We have also specified what is not considered wastewater. In the final rule, *wastewater* means process wastewater and maintenance wastewater. The following are not considered wastewater for the purposes of this subpart:

(1) Stormwater from segregated sewers;

(2) Water from fire-fighting and deluge systems, including testing of such systems;

(3) Spills;

(4) Water from safety showers;

(5) Samples of a size not greater than reasonably necessary for the method of analysis that is used;

(6) Equipment leaks;

(7) Wastewater drips from procedures such as disconnecting hoses after cleaning lines; and

(8) Noncontact cooling water.

The following definitions have been added to the final rule: *gasholder, hard-piping, heat exchanger exit line, maintenance wastewater, miscellaneous vent, polyvinyl chloride homopolymer, process wastewater, process wastewater treatment system, PVC-combined process vent, PVC-only process vent, suspension blending process, table 10 HAP, total non-vinyl chloride organic HAP* and *wastewater stream.*

We have added a definition for *polyvinyl chloride homopolymers* to distinguish between homopolymers and copolymers. During the comment period, industry provided additional resin data distinguishing homopolymers and copolymers and is based largely on the proposed definition for polyvinyl chloride. For reasons discussion in section V.D of this preamble, we have set limits for five subcategories of resin, including copolymers. Therefore, the new definitions are necessary to distinguish between homopolymers and copolymers. The definitions are based on the information provided in comments. In the final rule, *polyvinyl chloride homopolymer* means a synthetic thermoplastic polymer that is derived from the polymerization of vinyl chloride and has the general chemical structure $(-H_2CCHCl-)_n$. Polyvinyl chloride homopolymer is typically a white powder or colorless granule. Polyvinyl chloride homopolymers are produced by different processes, including (but not limited to) suspension, dispersion/emulsion, blending and bulk processes.

At proposal, we did not set separate limits for suspension blending resins. During the comment period, industry provided additional resin data regarding suspension blending resins. As described in section V.D of this preamble, we have set limits for five types of resin, including suspension blending. Therefore, a definition to distinguish suspension blending resins from other resin types is necessary. The definition is based on the information provided in comments. In the final rule, *suspension blending process* means a process for producing polyvinyl chloride resin that is similar to the suspension polymerization process, but employs a rate of agitation that is significantly higher than the highest range for non-blending suspension resins. The suspension blending process uses a recipe that creates extremely small resin particles, generally equal to or less than 100 microns in size, with a glassy surface and very little porosity. The suspension blending process concentrates the resins using a centrifuge that is specifically designed to handle these small particles. Polyvinyl chloride resins produced using the suspension blending process are referred to as blending resins and are typically blended with dispersion resins.

At proposal, we did not subcategorize process vents. For the final rule, we are subcategorizing process vents into PVC-only and PVC-combined vents for reasons discussed in section V.D of this preamble. Therefore, it is necessary to distinguish between the two process vent subcategories. In the final rule, *PVC-only process vent* means a process vent that originates from a PVCPU and is not combined with a process vent originating from another source category prior to being controlled or emitted to the atmosphere. In the final rule, *PVC-combined process vent* means a process vent that originates from a PVCPU and is combined with one or more process vents originating from another source category prior to being controlled or emitted to the atmosphere.

At proposal, we did not have information on gasholders and did not propose standards for them. Following proposal, industry provided comment on control options and cost information for gasholders and we have included requirements for gasholders in the final rule. Therefore it was necessary to add a definition for gasholders to the final rule. The definition is based on information provided in comments. In the final rule, *gasholder* means a surge control vessel with a bell that is floating in a vessel filled with water and is used to store gases from the PVC production process prior to being recovered or sent to a process vent control device. The bell rises and lowers as low-pressure gases enter and leave the space beneath the bell and the water provides a seal between the enclosed gas within the floating bell and the ambient air.

At proposal, we did not define *maintenance wastewater,* but instead, required that all wastewater be subject to the same proposed provisions. We received comments from industry contending that quantifying a concentration to establish compliance for maintenance wastewater would be extremely difficult if not impossible because maintenance activities are highly variable. Industry also noted that HAP are minimized in maintenance wastewater by requiring that components meet applicable opening standards before the introduction of water for cleaning. The final rule includes provisions that address process and maintenance wastewater separately; therefore, we have added definitions for *maintenance wastewater* and *process wastewater* to the final rule. The definitions are based on those provided

in the HON, because the wastewater streams are similar and, in some cases, they are co-located. In the final rule, *maintenance wastewater* means wastewater generated by the draining of process fluid from components in the PVCPU into an individual drain system prior to or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewaters include descaling of heat exchanger tubing bundles, hydroblasting PVCPU process components such as polymerization reactors, vessels and heat exchangers, draining of low legs and high point bleeds, draining of pumps into an individual drain system, draining of portions of the PVCPU for repair and water used to wash out process components or equipment after the process components or equipment has already been opened to the atmosphere and has met the requirements of 40 CFR 63.11955. In the final rule, *process wastewater* means water that comes into direct contact with HAP or results from the production or use of any raw material, intermediate product, finished product, by-product or waste product containing HAP, but that has not been discharged untreated as wastewater. Examples are product tank drawdown or feed tank drawdown; water formed during a chemical reaction or used as a reactant; water used to wash impurities from organic products or reactants; water used to cool or quench organic vapor streams through direct contact; water discarded from a control device; and condensed steam from jet ejector systems pulling vacuum on vessels containing organics. Gasholder seal water is not process wastewater until it is removed from the gasholder.

In the final rule, *wastewater stream* means a stream that contains only wastewater as defined in this section.

Also in the final rule, *table 10 HAP* means a HAP compound listed in table 10 of final rule. *Total non-vinyl chloride organic HAP* means, for the purposes of this subpart, the sum of the measured concentrations of each table 10 compound as calculated according to the procedures specified in 40 CFR 63.11960(e) and 40 CFR 63.11980(b).

J. Cost and Emission Impacts

Comment: Three commenters expressed concern that costs for PRD are greatly underestimated. One commenter estimated that retrofitting existing PRD with release indicators will cost $5,000 per PRD. The commenter stated that these costs include the actual measurement device itself, installation labor, wiring back to the control room, input/output cards in distributed control system (DCS) and initial configuration (programming) of the DCS for alarms, logging, etc. The commenter stated that with two facilities each containing over 100 PRD the total cost would be over $1,000,000 to retrofit. Another commenter also cited an estimate of $5,000 if a wireless pressure monitoring device is used, or $10,000 per PRD if a more substantial flow monitoring device is needed. The commenter estimated the cost for its three facilities with 393 total PRD would range from $1,965,000 to $3,930,000 to retrofit. A third commenter estimated a cost of $10,000 to retrofit each PRD, accounting for installation and integration into the process control system. With approximately 200 PRD at a facility, the commenter estimated a total cost of $2,000,000. One commenter also noted that if the EPA is requesting pressure switches between the rupture discs and the safety valves, this is ''relatively'' easy to accomplish because it would require the instrument, communication wiring, and a small amount of piping. This commenter also requested that the EPA make it clearer whether flow indication or pressure indication is required in the proposed rule. Additionally, one commenter stated that multiple systems for release indication already exist within PVC operations.

One commenter expressed concern about bypass flow indicator costs. The commenter stated that a conservative estimate to install bypass flow indicators is similar to that for flow indication on PRD, approximately $5,000 per open ended line. Considering there are hundreds of such lines, the commenter indicated that installation cost could exceed $1,000,000 per facility.

Response: The EPA maintains that the capital cost estimate of $188,900 and annual cost estimate of $26,900 per facility is appropriate. Although commenters provided cost estimates for particular facilities, costs provided in the comment letters were general in nature, and the commenters did not provide documentation or detailed cost analyses such that the provided estimates could be reviewed. Therefore, we must estimate costs for all facilities using a consistent methodology which is based on data collected by the EPA. We developed our cost estimate for electronic PRD monitoring systems using the *Proposed Amended Rule 1173—Control of Volatile Organic Compound Leaks and Releases from Components at Petroleum Facilities and Chemical Plants,* from the South Coast Air Quality Management District. Other commenters have stated that most PVC plants ''typically have rupture discs installed below relief valves that discharge to the atmosphere, and monitor the space between the rupture disc and the PRD for leaks on a routine basis using a local pressure indicator and log this information for safety purposes.'' The EPA maintains that a facility must use a monitor to indicate an emission release to the atmosphere; the type of indicator is left to the facility.

Comment: Several commenters took issue with the cost estimates related to resin stripping. The commenters stated that current technology will not allow facilities to meet the resin limits and indicated that it will be necessary to develop new technology and the associated costs will be much greater than the current EPA stripped resin cost estimate. One commenter stated that millions of dollars will be required to develop the technology and install equipment. Commenters contended that improvements in PVC resin stripping beyond that which can be achieved to meet new MACT floor HAP concentrations are not feasible due to thermal degradation of PVC resins with elevated heat histories (combination of higher temperatures and residence times). One commenter added that steam is one of many components in the resin stripping process, but it cannot be used as the sole or primary control technique without seriously degrading the resin product. Commenters indicated that some types and grades of resin are sensitive to heat history such as that incurred by steam stripping and that color and heat stability can be negatively impacted by excess heat history. Several commenters disagreed with the EPA's conclusion that PVCPU would only need to use additional steam in existing equipment to strip resin to comply with the proposed vinyl chloride and total HAP emission limits. Commenters also indicated that the effectiveness of certain types of stripping technologies is not increased by the addition of steam above energy balance requirements. Another commenter added that PVC resins, some types and grades more than others, are sensitive to heat such as that incurred by steam stripping. One commenter stated that the EPA offered no substantiation for the claim that more steam in existing equipment would provide for anything more than negligible reductions in vinyl chloride and HAP levels in stripped resin. The commenter added that two of the major

licensors of PVC resin stripping technology have said they would not guarantee new equipment, let alone existing equipment, could meet the proposed limit of 0.48 ppmw of vinyl chloride for all resins. Commenters indicated that for some PVC grades, a significant column retrofit or replacement would be necessary to meet more stringent resin limits.

Response: For the final rule, we revised the methodology used to estimate cost impacts for stripped resin based on the comments and additional cost data provided by commenters. For the proposed rule, costs of affected sources meeting the proposed concentration standards for stripped resins were estimated by calculating the amount of additional steam required to strip vinyl chloride and total HAP to the proposed concentration standards. Based on comments and information provided by commenters, we agree that costing additional steam may not be the appropriate control technique to meet the stripped resin limits. For the final rule, we estimated costs of affected sources demonstrating compliance with the final stripped resin concentration standards by calculating the cost of installing a new resin stripper, based on information provided by commenters. We did not include annual costs other than the amortized capital investment since affected sources must currently pay for the operation and maintenance of their current resin strippers. Additionally, we have revised MACT floor calculations, as discussed in section V.E.2 of this preamble. The revised MACT floor and impacts analyses show that one facility will not be able to meet the final limits. Based on information received during the public comment period, we estimate the one facility not able to meet the final limits will be required to install a new resin stripper with a total capital cost of $10 million and a total incremental annual cost of $944,000 per year.

Comment: Several commenters expressed concern with the costs imposed by wastewater compliance requirements. One commenter contended that requiring monthly sampling for HAP in wastewater will impose undue hardship on facilities when they are required to perform continuous monitoring of stripper operating levels as well. This commenter estimated an additional $65,000 per year from the monthly sampling. Another commenter stated that due to the low wastewater vinyl chloride limit, the cost for controls will be much higher. The commenter added that simply adding steam will be insufficient and that it will be necessary to replace the stripper at a cost of $3,400,000 with annual operating costs of $636,000. One commenter recommended that the HAP control requirements (testing, sampling, etc.) should be removed from the wastewater rule since no emission benefit is achieved.

Response: Similar to our decision for stripped resins in the final rule, we have removed all requirements for continuous parametric monitoring of wastewater strippers. The requirements to conduct periodic sampling for vinyl chloride and total non-vinyl chloride organic HAP are sufficient to assure compliance with the stripped resin limits. We have also established a revised limit for total non-vinyl chloride organic HAP from process wastewater. Monthly sampling and analysis for total non-vinyl chloride organic HAP is necessary to ensure that the limits are being met on a continuous basis. We have also substantially reduced the burden on facilities by only requiring re-analysis of untreated streams once per year to ensure that those streams are below the process wastewater limits and that they do not require treatment. These changes have significantly reduced the burden of the final rule.

K. Economic Impacts

Comment: Several commenters expressed concern with the economic ramifications of the proposed rule to PVC producers and consumers. The commenters stated that the EPA did not adequately quantify the effect to the entire PVC supply chain when considering the rule and that as a result many hardships and changes will occur. Commenters contended that impacts will be cascaded down the supply chain and increase cost of doing business. One commenter encouraged the agency to review and carefully consider these impacts in light of the Obama Administration's Executive Order 13563, *Improving Regulation and Regulatory Review*, which calls for review and revision of regulations that stifle job creation and economic growth.

Commenters argued the PVC MACT will impact a company's competitiveness in the global market, where overseas PVC producers are not subject to such stringent regulations. One commenter expressed concern with the impact on construction of new plants; the proposed PVC rule will pose a significant deterrent to any company that considers citing new or reconstructed PVC manufacturing in the United States causing additional harm to the economy. Several commenters expressed concern that if enacted without significant revision, the PVC rule will result in the closure of several plants in the United States.

One commenter representing the chlor-alkali industry provided an example of how the PVC rule will impact related industries. The commenter stated that as currently proposed compliance by United States PVC manufacturing facilities with the MACT will cause a 4-percent–8-percent reduction in demand in the domestic chlorine market. Based on average industry pending patterns and labor-output ratios, in total, between 3,300 and 6,600 jobs are at risk.

Commenters expressed concern regarding the economic impacts to several industries, including: the wall covering industry, the vinyl flooring industry, resilient flooring operations, pipe applications and the vinyl siding products industry.

Several commenters contended that the PVC rule would result in loss of performance characteristics and cost increases due to discontinuation and substitution of a different quality or type of resin for a previously formulated material, engineering changes, such as retooling or the necessary investment in new or replacement equipment due to the different types or qualities of resin and different formulations, and loss of time as new formulations may take years to develop and refine for their intended application. The commenters contended that over 100 types and grades of PVC resins will be affected, resulting in significant impact on how compounders, converters and fabricators operate, potentially changing product performance or raising costs. Other Two commenters stated that the net cost to consumers in the United States and Canada for the substitution of alternative materials for the PVC-based products that they currently use would be almost $17.7 billion dollars per year, plus an additional $5.6 billion in new investment to manufacture the incremental volume of substitute material and an associated $2.8 billion per year in capital recovery charges (details for numbers are in the document, *The Economic Benefits of Polyvinyl Chloride in the United States and Canada*, released by the American Chemistry Council and The Vinyl Institute in 2008). Several commenters expressed concern that imposing overly stringent requirements on PVC resin manufacturers will significantly increase imports from foreign sources and result in less domestic competition.

Response: The final rule contains several revisions that reduce the annual cost of the final rules by more than 75 percent from proposal ($19.7 million per year at proposal to $4.1 million per

year for the final rules, for major and area sources combined). These revisions are discussed in section VI of this preamble. For the reasons described above, we have revised subcategories and the MACT floor calculation for stripped resins resulting in revised limits for stripped resins. These changes result in stripped resin limits that are achievable by 15 out of 16 sources without installation of additional controls. Based on information received during the public comment period, the EPA estimates the one facility not able to meet the final stripped resin limits for major sources will be required to install a new resin stripper with a total capital cost of $10 million and an incremental annual cost of $944,000 per year. As a result, the final rule does not impose a significant burden on the source category as a whole. The commenters also did not supply any data or analysis to justify their assertions regarding potential plant closures, negative employment impacts, reduction in demand for chlorine, negative effects on the PVC supply chain, possible increases in imports or other economic harm.

Comment: One commenter expressed concern with the lack of consideration given to small businesses. The commenter stated that the EPA's Economic Impact Analysis identified only eight companies affected by the proposed rule. The commenter added that because all eight of these companies have more than 1,500 employees and annual revenues above $2 billion, the EPA certified the proposed rule and declared no significant economic impact on a substantial number of small entities. As such, no regulatory flexibility analysis was prepared by the agency. However, the commenter contended, the EPA did not host any ''SBREFA panels'' prior to reaching this conclusion, preventing the small business community from providing relevant input on the proposed rule's impacts. The commenter stated that there will be higher costs due to the PVC MACT which could be passed along the supply chain in the form of higher prices to customers, many of whom may be small businesses and less able to absorb regulation-induced price increases. The commenter concluded that the EPA should amend its analysis to investigate the secondary effect of the regulation on small businesses down the supply chain.

Response: The analysis of impacts on small entities called for by the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), is to cover small entities directly affected by a rule. The RFA does not require indirect or secondary impacts to be included in a small entity analysis. This is consistent with the EPA's interpretation of the RFA as amended by SBREFA. Only rules that will have a direct significant adverse economic impact on a substantial number of small entities that are subject to the rule require an Initial Regulatory Flexibility Analysis or Final Regulatory Flexibility Analysis (see 5 U.S.C. sections 603–605).

L. Affirmative Defense

Comment: Several commenters opposed the EPA's affirmative defense requirements. One commenter contended it is unlawful and arbitrary because, although the EPA has eliminated its compliance exemption for periods of startup, shutdown and malfunction, the agency's final rule includes an ''affirmative defense to penalties that purports to bar courts from imposing any penalties on sources that violate their emission standards during a malfunction and satisfy certain agency created conditions related to preventing malfunctions and controlling malfunction emissions.'' This commenter contended that in this proposal, the EPA acts outside of its delegated authority to limit civil penalties available in citizen suits or its own enforcement actions, and the proposal will impermissibly chill citizen participation and the ability to win an effective, deterrent remedy in CAA enforcement actions. The commenter added that the affirmative defense would likely be used on a routine basis by polluters seeking to avoid penalties, imposing a technical burden on citizens seeking civil penalties against polluters.

Another commenter opposed incorporating affirmative defense penalties into regulations. The commenter stated that the EPA has discretion to decide what cases to prosecute, to consider settlements and to request civil penalties in a case-by-case manner, as long as it acts consistent with the CAA to protect clean air as its top priority and, thus, the commenter believes that promulgating this affirmative defense will allow polluters to claim that any violation of the standard is due to a malfunction in order to evade the requirements.

Another commenter requested that if affirmative defense is promulgated, the EPA specify the amount of compensatory damages should apply to each malfunction, modify the rule so that affirmative defense cannot be used by a specific facility or company more than once within a set period of time, and require public reporting of malfunctions or emissions exceedances.

Response: The EPA included an affirmative defense in the final rule in an attempt to balance a tension inherent in many types of air regulation to ensure adequate compliance, while simultaneously recognizing that despite the most diligent of efforts, emission limits may be exceeded under circumstances beyond the control of the source. The EPA must establish emission standards that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' 42 U.S.C. 7602(k) (defining ''emission limitation and emission standard''). See generally *Sierra Club* v. *EPA*, 551 F.3d 1019, 1021 (D.C. Cir. 2008). Thus, the EPA is required to ensure that CAA section 112 emissions limitations are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that even where there is a malfunction, the emission limitation is still enforceable through injunctive relief. While ''continuous'' limitations, on the one hand, are required, there is also caselaw indicating that in many situations it is appropriate for the EPA to account for the practical realities of technology. For example, in *Essex Chemical* v. *Ruckelshaus*, 486 F.2d 427, 433 (D.C. Cir. 1973), the District of Columbia Circuit acknowledged that in setting standards under CAA section 111, ''variant provisions,'' such as provisions allowing for upsets during startup, shutdown and equipment malfunction ''appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force.'' See also, *Portland Cement Association* v. *Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973). Though intervening caselaw such as *Sierra Club* v. *EPA* and the CAA 1977 amendments calls into question the relevance of these cases today, they support the EPA's view that a system that incorporates some level of flexibility is reasonable. The affirmative defense simply provides for a defense to civil penalties for excess emissions that are proven to be beyond the control of the source. By incorporating an affirmative defense, the EPA has formalized its approach to upset events. In a Clean Water Act setting, the Ninth Circuit required this type of formalized approach when regulating ''upsets beyond the control of the permit holder.'' *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253, 1272–73 (9th Cir. 1977). But, see, *Weyerhaeuser Co.* v. *Costle*, 590

F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission limitations are ''continuous,'' as required by 42 U.S.C. 7602(k), and account for unplanned upsets and, thus, support the reasonableness of the standard as a whole. The EPA is not adopting commenters' suggestion with respect to compensatory damages or limits on the frequency of use of the affirmative defense. It is not clear that EPA has authority to require the automatic imposition of compensatory damages and even if such authority exists, the EPA does not think automatic imposition of damages is appropriate. Ensuring that malfunctions do not recur can be handled through imposition of appropriate injunctive relief. In addition, the EPA's view is that it would not be appropriate to limit a source's ability to take advantage of the affirmative defense to one time over a specified period of time, such as 10 years, given that the affirmative defense is only available when the source could not have prevented the excess emissions. With respect to commenters' suggested reporting requirements, the reporting requirements in the rule promulgated here already require malfunction reporting and the affirmative defense provisions require that parties choosing to assert the affirmative defense meet additional malfunction reporting requirements. Any such reports submitted to the EPA are publicly available pursuant to CAA section 114.

M. Beyond-the-Floor Analyses

At proposal, we determined that the control technologies that would be needed to achieve the proposed MACT floor levels for process vents are generally the most effective controls available for reducing vinyl chloride, HCl, THC and CDD/CDF and we estimated the costs for those technologies for facilities that did not meet the proposed limits for process vents. Furthermore, at proposal, we did not identify any beyond-the-floor options for process vents. For the final rule, as a beyond-the-floor option for process vents (*i.e.,* PVC-only and PVC-combined process vents), we assessed the costs and emission reductions for existing major source facilities to meet the new source limits for both process vent subcategories by using enhanced vinyl chloride recovery (via an upgraded refrigerated condenser). Based on the resulting analysis of the cost effectiveness, we determined it is not appropriate to go beyond-the-floor for either subcategory of process vents at existing sources. This analysis is discussed in the memorandum, *Revised Beyond-the-Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category*.

For stripped resin at existing and new major sources, we analyzed the same beyond-the-floor option as at proposal, and determined it was not appropriate to go beyond-the-floor for stripped resin at existing and new major sources considering the cost and emission reductions of this option.

For equipment leaks, we analyzed a beyond-the-floor option at existing sources of complying with 40 CFR part 63, subpart UU level 2, instead of the MACT floor level of control, compliance with 40 CFR part 61, subpart V. Based on the results of the analysis, which are presented in Tables 16 and 18 of this preamble, we determined that it is appropriate that MACT for equipment leaks at existing and new major sources require compliance with subpart UU level 2, considering the cost and emission reductions of this option. The MACT floor level of control for new sources, compliance with subpart UU level 2, was identified as the most effective control of emissions from equipment leaks. Therefore, no beyond-the-floor HAP emission reduction approaches were identified for equipment leaks at new major sources. This analysis is discussed in sections VI.A and VI.B of this preamble and in the memorandum, *Revised Beyond-the-Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category*.

For heat exchange systems, we determined that the final leak action level and monitoring interval are generally the most effective LDAR program to control emissions from heat exchange systems. Therefore, no beyond-the-floor options were identified for heat exchange systems at existing or new major sources.

At proposal and for the final rule, we determined it is appropriate for storage vessels at existing and new major sources meeting specific vapor pressure and storage capacity parameters specified in 40 CFR part 60, subpart Kb to comply with the control requirements of 40 CFR part 63, subpart WW as a beyond-the-floor control considering cost and emission reductions. This analysis is discussed in sections VI.A and VI.B of this preamble and in the memorandum, *Revised Beyond-the-Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category.*

At proposal, we analyzed a beyond-the-floor option for wastewater of treating streams with HAP concentration greater than 1,000 ppmw (of 40 CFR part 63, subpart G, Table 9 HAP), and annual average flow rates greater than 10 liters per minute. In the final rule, we determined the MACT floor level of control for wastewater to includes concentration limits for total non-vinyl chloride organic HAP. Consequently, we analyzed a different beyond-the-floor options for wastewater, requiring all currently uncontrolled process wastewater (*e.g.,* wastewater from scrubbers and heat exchange systems) to be conveyed to, and treated by, a wastewater stripping unit. Based on the results of this analysis, we determined it is not appropriate to go beyond-the-floor for wastewater at existing and new major sources considering the cost and emission reductions of this option. This analysis is discussed in the memorandum, *Revised Beyond-the-Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category*.

At proposal, we did not identify any beyond-the-floor options for gasholders; however, we did solicit comments on control options for gasholders. Based on the information provided in comments, for the final rule, we analyzed a beyond-the-floor option of minimizing fugitive emissions by requiring the use of floating objects on the surface of the water seal at existing and new sources. Based on the results of the analysis, which are presented in Tables 16 and 18 of this preamble, we determined that it is appropriate to require gasholders at existing and new major sources reduce their fugitive emissions by using floating objects on the surface of the water seal as a beyond-the-floor control, considering cost and emission reductions. This analysis is discussed in the memorandum, *Revised Beyond-the-Floor Analysis for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category*.

VI. Impacts of the Final PVC Rules

The impacts presented in this section include the impacts for PVC production facilities to comply with the final rules, and with the requirements of other subparts referenced by the final rules.

A. What are the air impacts?

We have estimated the potential emission reductions that are expected to be realized through implementation of the final rules. Table 18 of this preamble summarizes the emission reductions estimated for existing major sources. The table shows the emission reductions for each pollutant and emission point. Table 18 of this preamble also summarizes the emission

reductions for the beyond-the-floor options selected for existing major sources (*i.e.,* control of equipment leaks, storage vessels and gasholders). The major source analysis is documented in the memorandum, *Revised Costs and Emission Reductions for Major Sources in the Polyvinyl Chloride and Copolymers (PVC) Production Source Category*. Table 19 of this preamble summarizes the emission reductions estimated for existing area sources complying with GACT. The area source analysis is documented in the memorandum, *Generally Achievable Control Technology (GACT) Analysis for Area Sources in the Polyvinyl Chloride and Copolymers (PVC) Production Source Category*. Both memoranda are available in the docket. We do not project any new major or area sources to be constructed in the 5 years following promulgation of the final rules; no emission reductions were calculated for new sources. The memoranda document emission reductions associated with model major and area sources complying with the new source requirements.

TABLE 18—EMISSION REDUCTIONS OF THE FINAL PVC AND COPOLYMERS PRODUCTION STANDARDS FOR MAJOR SOURCES

Emission point	Pollutant emission reductions (tpy)			
	Vinyl chloride	Total HAP	CDD/CDF (TEQ)	HCl
Major sources MACT floor				
Process vents [a]	0.102	1.93	0.017 g/yr	21.4
Stripped resins	7.58	7.58	0	0
Wastewater	0	0	0	0
Equipment leaks	0	0	0	0
Storage vessels	0	0	0	0
Other emission sources	0	0	0	0
Heat exchange systems	101	101	0	0
Major sources beyond the floor				
Equipment leaks	0	85.0	0	0
Storage vessels	0	0	0	0
Other emission sources-gasholders	22.0	22.0	0	0
Major Source total	130	217	0.017 g/yr	21.4

[a] Emission reductions for process vents are stated as total organic HAP; this value does not include HCl or chlorine reductions.

TABLE 19—EMISSION REDUCTIONS OF THE FINAL PVC AND COPOLYMERS PRODUCTION STANDARDS FOR AREA SOURCES

Emission point	Vinyl chloride (tpy)	Dioxin/furan (g/yr)	Total HAP (tpy)
Process vents	0	0	0
Heat exchange systems	15.1	0	15.1
Stripped resins	0	0	0
Wastewater	0	0	0
Equipment leaks	0	0	9.29
Other emission sources	0	0	0

We estimated emission reductions of the final rule for each emission point. For all emission points, we first calculated emissions at the current level of control for each facility (referred to as the baseline level of control), and at the MACT level of control selected for major sources and the GACT level of control selected for area sources. We calculated emission reductions as the difference between the final level and baseline.

Major Sources

For process vents at major sources, we calculated baseline emissions from the measured HAP concentrations at the outlet of the control devices, and HAP emissions using the final emission limits, in combination with the vent stream flow rates measured during emission tests.

For stripped resins at major sources, we calculated emissions assuming that all the HAP remaining in the resin would eventually be emitted from processes downstream of the resin stripper. This assumption results in a calculation of the potential emissions at the baseline stripped resin concentration levels, and final MACT concentration levels. Emissions were calculated from the HAP concentration in the stripped resin, and the resin production rate.

For wastewater at major sources, we estimated the emissions from the HAP concentration in the uncontrolled wastewater streams, the maintenance wastewater streams, and in the controlled wastewater streams, and the wastewater flow rates or generation rates.

For equipment leaks at major sources, we estimated emissions for the baseline LDAR program in use at each facility, and the final equipment leaks requirements using model equipment counts, average emission factors for leaking equipment and control efficiencies for LDAR programs developed as part of the technology review required by section 112(d)(6) of the CAA (see section V.H of this preamble for additional detail). Model equipment counts were used because actual equipment counts were not

collected as part of our August 21, 2009, CAA section 114 survey and testing request sent to the PVC industry. The survey requested information only on regulatory LDAR programs currently in place at each facility, and the costs for the facility to conduct the LDAR program.

For other emission sources, we estimated baseline emissions from gasholders using information provided by industry during the comment period. We estimated the emission reductions associated with installing floating objects on gasholder water seals to reduce emissions of vinyl chloride from those seals, as a beyond the floor option, based on additional information provided by the PVC industry after the comment period. We calculated emissions from reactor openings from information provided in responses to our August 21, 2009, CAA section 114 survey and testing request provided by affected sources.

We calculated emissions from heat exchange systems based on emissions information provided in the CAA section 114 survey responses provided by affected sources. Emission reductions from heat exchange systems were calculated assuming that, once the LDAR program was in effect, emissions would be eliminated due to the low leak action level that is being finalized.

Area Sources

For process vents, we calculated emissions from the concentration of HAP in the vent stream and the vent gas flow rates measured during emission tests. For process vents in the PVC-only subcategory, we calculated baseline emissions for the one area source in the subcategory from the measured HAP concentrations at the outlet of the control device. We did not select an option more stringent than the current emission level; therefore, there were no emission reductions calculated. For process vents in the PVC-combined subcategory, we calculated baseline emissions for the one area source in the subcategory from the measured HAP concentrations at the outlet of the control. Since the existing PVC-combined area source currently meets the GACT standards, we did not calculate a reduction of HAP emissions associated with meeting the GACT emission limits.

For stripped resins, emissions were calculated from the HAP concentration in the stripped resin, and the resin production rate. For the one existing area source in the suspension subcategory, we calculated emissions assuming that all the HAP remaining in the resin would eventually be emitted from processes downstream of the resin stripper. This assumption results in a calculation of the potential emissions at the stripped resin concentration levels the affected is currently achieving. Since the existing PVC area source in the suspension resin subcategory currently meets the GACT standard, no emission reductions were calculated. For the one existing area source in the bulk resins subcategory, we estimated emissions downstream of the resin stripper using emission rates submitted by the facility since resin produced by the bulk process does not go through downstream drying processes since the resin is in solid form after the polymerization process.

For wastewater at existing area sources, we estimated the emissions from the HAP concentration in the uncontrolled wastewater streams, the maintenance wastewater streams, and in the controlled wastewater streams, and the wastewater flow rates or generation rates.

For equipment leaks at existing area sources, we estimated emissions for the LDAR program in use at both area sources and emissions associated with complying with the GACT option. Emissions were calculated using a combination of facility provided and model equipment counts, average emission factors for leaking equipment and control efficiencies for LDAR programs developed as part of the technology review required by section 112(d)(6) of the CAA (see section V.H of this preamble for additional detail). Model equipment counts were used for equipment types for which counts were not provided by the affected sources. The CAA section 114 survey requested information only on regulatory LDAR programs currently in place at each facility, and the costs for the facility to conduct the LDAR program; however, one facility provided some, but not all equipment counts for which emissions were estimated.

For other emission sources, we calculated emissions from reactor openings from information provided in CAA section 114 survey responses provided by affected sources. The existing PVC area sources currently do not operate gasholders; therefore no emissions from gasholders were calculated for area sources.

We calculated emissions from heat exchange systems based on emissions information provided in the CAA section 114 survey responses provided by affected sources. Emission reductions from heat exchange systems were calculated assuming that, once the LDAR program was in effect, emissions would be eliminated due to the low leak action level that is being finalized.

B. What are the cost impacts?

We have estimated compliance costs for all existing sources to meet the sampling and testing requirements, add the necessary controls, monitoring devices, recordkeeping and reporting procedures to comply with the final rules. Based on this analysis, we anticipate an overall total initial investment of $17.6 million for major sources and $486,000 for area sources. We anticipate an associated total annual cost of $3.94 million for major sources and $167,000 for area sources (using a discount rate of 7 percent), in 2010 dollars, as shown in Table 20 and Table 21 of this preamble. We do not anticipate the construction of any new PVCPU in the next 5 years and, therefore, there are no new source cost impacts. Estimated impacts of the new area source requirements for a model facility are presented in the memoranda, *Costs and Emission Reductions of the MACT Floor Level of Control for the Promulgated Polyvinyl Chloride and Copolymers (PVC) Production Source Category and Cost and Emission Reductions of the Area Source Level of Control for the Promulgated Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* which are in the PVC docket.

TABLE 20—COST IMPACTS OF THE FINAL PVC AND COPOLYMERS PRODUCTION STANDARDS FOR EXISTING MAJOR SOURCES

Emission point	Total initial cost (million 2010$) [a]	Total annual cost (million 2010$/yr) [b]
Major sources MACT floor		
Process vents	3.38	1.72
Stripped resins	10.1	1.13
Wastewater	0.075	0.165
Equipment leaks	2.87	0.469
Storage vessels	0.0165	0.0233
Other emission sources	0.0165	0.0233
Heat exchange systems	0.0466	0.152
Major sources beyond the floor		
Equipment leaks	1.02	0.238
Storage vessels	0	0
Other emission sources—gasholders	0.0750	0.0222
Major source total	17.6	3.94

[a] Total initial costs for facilities include the capital cost of control equipment, testing and monitoring, recordkeeping and reporting.
[b] Total annual costs include: Annualized capital costs, annual cost to operate control equipment, testing and monitoring costs, recordkeeping and reporting costs, and repair costs.

TABLE 21—COST IMPACTS OF THE FINAL PVC AND COPOLYMERS PRODUCTION STANDARDS FOR EXISTING PVC AREA SOURCES

Emission point	Total initial cost (million$)	Total annual cost (million$)	Cost effectiveness ($/ton)
Process vents	0.0963a	0.0218b	(c)
Heat exchange systems	0.00743	0.0255	1,139
Resins	0.00864	0.0212	(c)
Wastewater	0.00743	0.00198	(c)
Equipment leaksd	0.360	0.0725	7,807
Other emission sources	0.00220	0.00311	(c)
Storage vessels	0.00220	0.00311	(c)
Area source total	0.484	0.167	(c)

[a] Total initial cost for process vents includes initial recordkeeping and reporting costs (which include year 1 annual costs) and initial process vent testing.
[b] Total annual costs for process vents include process vent testing and annual recordkeeping and reporting (starting in year 2). Process vent testing is required every 5 years following the initial test; therefore, annual testing costs have been divided by 5 to distribute costs evenly across the 5-year period.
[c] Standard does not result in emission reductions; therefore, a cost effectiveness is not applicable.
[d] Total initial costs for equipment leaks include capital costs associated with complying with 40 CFR part 63, subpart UU, the cost of an electronic PRD monitoring system and the initial recordkeeping and reporting requirements. Annual costs include operation of the PRD monitoring system, complying with subpart UU and annual recordkeeping and reporting costs. Emissions and reductions of VOC, volatile hazardous air pollutants (VHAP) and organic HAP, categorized as total HAP. Emissions, reductions and associated costs referenced from memorandum—Cindy Hancy, RTI, to Jodi Howard, EPA/OAQPS, dated November 10, 2011, subject: *Technology Review for Equipment Leaks* (draft format), which is available in the docket. Baseline emissions, reductions and costs are adjusted based on equipment counts provided by CertainTeed.

Major Sources

For major sources, we calculated costs to meet the final level of control for each emission point. For process vents, we estimated costs to meet the final level of control for PVCPU that do not currently meet the final emission limit, based on reported data. For such PVCPU that currently use thermal oxidizers in combination with acid-gas scrubbers, we estimate the cost of compliance through the use of enhanced vinyl chloride recovery using a refrigerated condenser to reduce the quantity of vinyl chloride combusted to meet the vinyl chloride, HCl, CDD/CDF and THC. For PVCPU that currently use an absorber for vinyl chloride recovery, cost calculations are based on routing the vent gas from the absorber to a refrigerated condenser for enhanced organic HAP recovery. Costs calculations also include capital and annual costs for testing and monitoring of vinyl chloride, HCl, THC and CDD/CDF.

For PVCPU not currently meeting the final stripped resin limits, costs to meet the final level of control are based on industry estimates for a new resin stripper resulting in greater removal of vinyl chloride and total HAP from the resin. Testing and monitoring costs are also included in the costs to meet the final level of control. All PVCPU are expected to meet the final wastewater stripper outlet concentration limit. Therefore, initial and annual costs consist of additional testing and monitoring required to demonstrate compliance with the final emission standards.

For equipment leaks, cost estimates previously developed by the EPA were applied to each PVCPU that did not

already meet the final level of control (*i.e.,* 40 CFR part 63, subpart UU). The cost estimates include additional capital and annual cost associated with facilities switching from compliance with 40 CFR part 61, subpart V to subpart UU. We estimated additional capital and annual costs for an electronic PRD indicator, based on data collected for other EPA projects.

For other emission sources, we calculated costs for complying with the final, beyond-the-floor, level of control for gasholders. Capital cost estimates were based on data provided by industry at the request of the EPA following the comment period. Annual cost estimates were based on standard factors for costs such as amortization, maintenance, taxes and administration.

We calculated costs for complying with the final level for heat exchange systems, based on information collected for other EPA projects.

The analysis is documented in the memorandum, *Revised Costs and Emission Reductions for Major Sources in the Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* and is available in the docket.

Area Sources

For existing area sources, we calculated costs to meet the final level of control for each emission point. For each emission point, we estimated costs of the major source testing, monitoring and recordkeeping requirements.

For process vents in the PVC-only and PVC-combined subcategories, we did not select an option more stringent than the current emission level; therefore, there were no additional costs calculated.

For the one existing area source in the suspension subcategory and the one existing area source in the bulk resins subcategory, we did not calculate any additional costs since both facilities meet the promulgated GACT standards.

For wastewater at existing area sources, we did not estimate any additional costs since both facilities meet the promulgated GACT standards.

For other emission sources, we did not estimate any additional costs since neither of the existing PVC area sources operate a gasholder.

For equipment leaks, cost estimates previously developed by the EPA were applied to the existing area source PVCPU. The cost estimates include additional capital and annual cost associated with the facility switching from compliance with 40 CFR part 61, subpart V to 40 CFR part 63, subpart UU. We estimated additional capital and annual costs for a PRD, based on data collected for other EPA projects.

We calculated costs for complying with the final level of control for heat exchange systems, based on information collected for other EPA projects. The analysis is documented in the memorandum, *Generally Achievable Control Technology (GACT) Analysis for Area Sources in the Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* and is available in the PVC docket.

C. What are the non-air quality health, environmental and energy impacts?

Major Sources

We anticipate major affected sources will need to apply additional controls to meet the final emission limits. The energy impacts associated with meeting the final emission limits would consist primarily of additional electricity needs to run added or improved air pollution control devices. By our estimate, we anticipate that an additional 5,300 megawatt-hours per year would be required for the additional and improved control devices.

We anticipate secondary air impacts from major sources adding controls to meet the standards. The combustion of fuel needed to generate additional electricity would yield slight increases in nitrogen oxide (NO_X) and sulfur dioxide (SO_2) emissions. Since NO_X and SO_2 emissions and electric generating units are covered by capped emissions trading programs, we do not estimate an increase in secondary air impacts for these pollutants for this rule from additional electricity demand. The analyses are documented in the memorandum, *Revised Secondary Impacts for the Polyvinyl Chloride and Copolymers (PVC) Production Source Category,* available in the docket.

Area Sources

We do not anticipate the area affected sources will need to apply any additional controls with additional electricity or fuel requirements associated with meeting the final emission limits. Therefore, we have not estimated any additional secondary electricity generation of air impacts for area sources.

D. What are the economic impacts of the final standards?

We performed an economic impact analysis for PVC consumers and producers nationally, using the annual compliance costs estimated for this final rule. The impacts to producers affected by this final rule are annualized costs of less than 0.7 percent of their revenues, using the most current year available for revenue data. Demand and supply of PVC product is inelastic according to data included in the Economic Impact Analysis. Based on this information, one can conclude that demand will respond less than 1 to 1 with a change in output price, and that supply is inelastic (*i.e.,* will respond less than 1 to 1) with a change in output price. Hence, based on these results and data, the overall economic impact of this final rule on the affected industries and their consumers should be low. For more information, please refer to the *Economic Impact Analysis for the Polyvinyl Chloride and Copolymer NESHAP* that is in the docket (EPA–HQ–OAR–2002–0037).

VII. Statutory and Executive Order Reviews

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

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

In addition, the EPA prepared an analysis of the potential costs and emissions impacts associated with this action. This analysis is contained in *Cost and Impacts of the PVC and Copolymers Final Standard,* in Docket ID No. EPA–HQ–OAR–2002–0037. A copy of the analysis is available in the docket for this action and the analysis is briefly summarized in section VI.B of this preamble.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable until the OMB approves them.

The information requirements are based on notification, recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA

pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

The final rule requires maintenance inspections of the control devices, and some notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance. The information collection activities in this information collection request (ICR) include the following: Performance tests, wastewater sampling, resin sampling, LDAR monitoring, heat exchanger monitoring, PRD monitoring, operating parameter monitoring, preparation of a site-specific monitoring plan, monitoring and inspection, one-time and periodic reports and the maintenance of records. Some information collection activities included in the NESHAP may occur within the first 3 years, and are presented in this burden estimate, but may not occur until 4 or 5 years following promulgation of the final rule for some affected sources. To be conservative in our estimate, the burden for these items is included in this ICR. An initial notification is required to notify the Administrator of the applicability of this subpart, and to identify storage vessels, process vents, stripped resin, equipment leaks, wastewater, heat exchange systems and other emission sources subject to this subpart. A notification of performance test must be submitted, and a site-specific test plan written for the performance test, along with a monitoring plan. Following the initial performance test, the owner or operator must submit a notification of compliance status that documents the performance test and the values for the operating parameters. A periodic report submitted every 6 months documents the values for the operating parameters and deviations; a notification of inspection of vessels and related inspection records; leaking and monitoring information for equipment leaks; and leaking and monitoring data for heat exchangers, if greater than leak definition. Owners or operators of PVC facilities are required to keep records of certain parameters and information for a period of 5 years. The annual testing, annual monitoring, reporting and recordkeeping burden for this collection for major sources (averaged over the first 3 years after the effective date of the standards) is estimated to be $1.8 million. This includes 3,200 labor hours per year at a total labor cost of $0.3 million per year, and total non-labor capital costs of $2.8 million per year. The annual testing, annual monitoring, reporting and recordkeeping burden for this collection for area sources (averaged over the first 3 years after the effective date of the standards) is estimated to be $323,000. This includes 425 labor hours per year at a total labor cost of $41,000 per year, and total non-labor capital costs of $129,000 per year. These estimates include initial and annual performance tests, conducting and documenting semiannual excess emission reports, maintenance inspections, developing a monitoring plan, notifications and recordkeeping. Monitoring and testing cost were also included in the cost estimates presented in the control costs impacts estimates in section VI.B of this preamble. The total burden for the federal government (averaged over the first 3 years after the effective date of the standard) for major sources is estimated to be 809 hours per year, at a total labor cost of $37,281 per year. The total burden for the federal government (averaged over the first 3 years after the effective date of the standard) for area sources is estimated to be 160 hours per year, at a total labor cost of $7,324 per year. Burden is defined at 5 CFR 1320.3(b).

When a malfunction occurs, sources must report them according to the applicable reporting requirements of 40 CFR part 63, subparts DDDDDD and HHHHHHH. An affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions is available to a source if it can demonstrate that certain criteria and requirements are satisfied. The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (*e.g.,* sudden, infrequent, not reasonably preventable and not caused by poor maintenance or careless operation) and where the source took necessary actions to minimize emissions. In addition, the source must meet certain notification and reporting requirements. For example, the source must prepare a written root cause analysis and submit a written report to the Administrator documenting that it has met the conditions and requirements for assertion of the affirmative defense. The EPA considered whether there might be any burden associated with the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense. While recognizing that any such burdens are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense. The PVC industry is currently required to comply with the part 61 NESHAP requirement for releases from pressure relief valves and reactor manual vent valves, which does not allow a discharge into the atmosphere from these valves, except during an emergency. An emergency discharge means a ''discharge which could not have been avoided by taking measures to prevent the discharge.'' The owners or operators must, within 10 days of any release from a pressure relief valve or a reactor manual vent valve, submit a report to the Administrator. The report must include the ''nature and cause of discharge, the date and time of the discharge, the approximate total vinyl chloride loss during the discharge, the method used for determining the vinyl chloride loss, the action that was taken to prevent the discharge, and measures adopted to prevent future discharges.'' The costs for these reports are already accounted for in the ICR burden estimate. Therefore, the EPA estimates that there would be no additional costs for sources that choose to take advantage of the affirmative defense for malfunctions since it is already required for compliance with the rule. However, there may be other malfunctions that are not currently regulated under the part 61 NESHAP that might prompt a source to take advantage of an affirmative defense.

To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source (for those not already regulated under the part 61 NESHAP), the EPA is including in the ICR the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports and records, including the root cause analysis, totals $3,141 and is based on the time and effort required of a source to review relevant data, interview plant employees and document the events surrounding a malfunction that has caused an exceedance of an emission limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business, as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated, and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The industry in which the affected entities are in is NAICS 325211 (Polyvinyl chemical resins manufacturing). The Small Business Administration small business size definition for this industry is 750 employees or less for parent entities. This final rule will not impose any requirements on small entities. To the EPA's knowledge, there are no small entities subject to the final rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. The total annualized cost of this rule is estimated to be no more than $4.1 million (2010$) in any one year. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA, because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule impacts only PVC production facilities and, thus, does not impact small governments uniquely or significantly.

E. Executive Order 13132: Federalism

The action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule imposes requirements on owners and operators of specified major and area sources, and not on state or local governments. There are no PVC production facilities owned or operated by state or local governments. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The final rule imposes requirements on owners and operators of specified area sources, and not tribal governments. There are no PVC production facilities owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045, because it is based solely on technology performance.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The EPA estimates that the requirements in this final action would cause most PVCPU to modify existing air pollution control devices (e.g., increase the horsepower of their wet scrubbers) or install and operate new control devices, resulting in approximately 92,000 megawatt-hours per year of additional electricity being used.

Given the negligible change in energy consumption resulting from this final action, the EPA does not expect any significant price increase for any energy type. The cost of energy distribution should not be affected at all by this final action since the action would not affect energy distribution facilities. We also expect that any impacts on the import of foreign energy supplies, or any other adverse outcomes that may occur with regards to energy supplies, would not be significant. We, therefore, conclude that if there were to be any adverse energy effects associated with this final action, they would be minimal.

I. National Technology Transfer and Advancement Act

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

This final rulemaking involves technical standards. The EPA proposes to use ANSI/ASME PTC 19.10–1981, *Flue and Exhaust Gas Analyses,* as an acceptable alternative to EPA Method 3B. This standard is available from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990.

No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 21, 107, RCRA SW–846, PS–8, PS–9 and the TCEQ Modified El Paso Method.

During the search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that were similar to the EPA's reference method, the EPA ordered a copy of the standard and reviewed it as a potential equivalent method. All potential standards were reviewed to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative

methods or scientific, engineering and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for particular VCS.

The search identified 17 other VCS that were potentially applicable for this rule in lieu of the EPA reference methods. After reviewing the available standards, the EPA determined that 17 candidate VCS (ASTM D3154–00 (2006), ASTM D3464–96 (2007), ASTM D3796–90 (2004), ISO 10780:1994, ASME B133.9–1994 (2001), ANSI/ASME PTC 19.10–1981 Part 10, ISO 10396:1993 (2007), ISO 12039:2001, ASTM D5835–95 (2007), ASTM D6522–00 (2005), CAN/CSA Z223.2–M86 (1999), NIOSH Method 2010, Amines, Aliphatic, ASTM D6060–96 (2001), EN 1948–3 (1996), EN 1911–1.2.3 (1998), ASTM D6735–01, ASTM D4855–97 (2002)) identified for measuring emissions of pollutants or their surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations.

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

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

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

An analysis of demographic data shows that the average percentage of minorities, percentages of the population below the poverty level, and the percentages of the population 17 years old and younger, in close proximity to the sources, are similar to the national averages, with percentage differences of 3, 1.8 and 1.7, respectively, at the 3-mile radius of concern. These differences in the absolute number of percentage points from the national average indicate a 9.4-percent, 14.4-percent and 6.6-percent over-representation of minority populations, populations below the poverty level and the percentages of the population 17 years old and younger, respectively.

In determining the aggregate demographic makeup of the communities near affected sources, the EPA used census data at the block group level to identify demographics of the populations considered to be living near affected sources, such that they have notable exposures to current emissions from these sources. In this approach, the EPA reviewed the distributions of different socio-demographic groups in the locations of the expected emission reductions from this rule. The review identified those census block groups with centroids within a circular distance of a 0.5, 3 and 5 miles of affected sources, and determined the demographic and socio-economic composition (e.g., race, income, education, etc.) of these census block groups. The radius of 3 miles (or approximately 5 kilometers) has been used in other demographic analyses focused on areas around potential sources.[5] [6] [7] [8] There was only one census block group with its centroid within 0.5 miles of any source affected by the final rule. The EPA's demographic analysis has shown that these areas, in aggregate, have similar proportions of American Indians, African-Americans, Hispanics and ''Other and Multi-racial'' populations to the national average. The analysis also showed that these areas, in aggregate, had similar proportions of families with incomes below the poverty level as the national average, and similar populations of children 17 years of age and younger.[9]

[5] U.S. GAO (Government Accountability Office). *Demographics of People Living Near Waste Facilities.* Washington DC: Government Printing Office; 1995.

[6] Mohai P. Saha R. *Reassessing Racial and Socio-economic Disparities in Environmental Justice Research.* Demography. 2006;43(2): 383–399.

[7] Mennis J. *Using Geographic Information Systems to Create and Analyze Statistical Surfaces of Populations and Risk for Environmental Justice Analysis. Social Science Quarterly,* 2002;83(1):281–297.

[8] Bullard RD, Mohai P, Wright B, Saha R, *et al. Toxic Waste and Race at Twenty 1987–2007.* United Church of Christ. March, 2007.

[9] The results of the demographic analysis are presented in *Review of Environmental Justice Impacts: Polyvinyl Chloride,* September 2010, a copy of which is available in the docket.

The EPA developed a communication and outreach strategy to ensure that interested communities have access to this final rule, are aware of its content, and had an opportunity to comment during the comment period. The EPA also ensured that interested communities had an opportunity to comment during the comment period. During the comment period, the EPA publicized the rulemaking via environmental justice newsletters, Tribal newsletters, environmental justice listservs and the Internet, including the EPA Office of Policy Rulemaking Gateway Web site (*http://yosemite.epa.gov/opei/RuleGate.nsf/*). The EPA will also conduct targeted outreach to environmental justice communities, as appropriate. Outreach activities may include providing general rulemaking fact sheets (*e.g.,* why is this important for my community) for environmental justice community groups, and conducting conference calls with interested communities. In addition, state and federal permitting requirements will provide state and local governments, and members of affected communities the opportunity to provide comments on the permit conditions associated with permitting the sources affected by the final rule.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the SBREFA 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. The EPA will submit a report containing this final 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 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). This rule will be effective April 17, 2012.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 13, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations, is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by:
■ a. Adding new paragraph (b)(45).
■ b. Revising paragraphs (b)(8), (b)(28), and (b)(54).
■ c. Revising paragraph (c)(3).
■ d. Revising paragraph (i)(1).
■ e. Revising paragraph (n)(1).
■ f. Adding paragraphs (p)(8) through (p)(11) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(8) ASTM D2879–83, Standard Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, approved 1983, IBR approved for §§ 63.111, 63.2406, and 63.12005.

* * * * *

(28) ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectometry, approved 2004, IBR approved for §§ 60.485, 60.485a, 63.772, 63.2351, 63.2354, and table 8 to subpart HHHHHHH of this part.

* * * * *

(45) ASTM D2879–96, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, approved 1996, IBR approved for §§ 63.111, 63.2406, and 63.12005.

* * * * *

(54) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, approved 2003, IBR approved for § 63.1349, table 4 to subpart DDDD of this part, and table 8 to subpart HHHHHHH of this part.

* * * * *

(c) * * *

(3) API Manual of Petroleum Measurement Specifications (MPMS) Chapter 19.2 (API MPMS 19.2), Evaporative Loss From Floating-Roof Tanks (formerly API Publications 2517 and 2519), First Edition, April 1997, IBR approved for §§ 63.1251 and 63.12005.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.309, 63.865, 63.3166, 63.3360, 63.3545, 63.3555, 63.4166, 63.4362, 63.4766, 63.4965, 63.5160, 63.9307, 63.9323, 63.11148, 63.11155, 63.11162, 63.11163, 63.11410, 63.11551, 63.11945, table 5 to subpart DDDDD of this part, table 1 to subpart ZZZZZ of this part, table 4 to subpart JJJJJJ of this part, and table 5 to subpart UUUUU of this part.

* * * * *

(n) * * *

(1) ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' (Modified El Paso Method), Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, January 31, 2003, IBR approved for §§ 63.654 and 63.11920.

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(p) * * *

(8) Method 8015C (SW–846–8015C), Nonhalogenated Organics by Gas Chromatography, Revision 3, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.11960, 63.11980, and table 10 to subpart HHHHHHH of this part.

(9) Method 8260B (SW–846–8260B), Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 2, December 1996, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.11960, 63.11980, and table 10 to subpart HHHHHHH of this part.

(10) Method 8270D (SW–846–8270D), Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 4, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.11960, 63.11980, and table 10 to subpart HHHHHHH of this part.

(11) Method 8315A (SW–846–8315A), Determination of Carbonyl Compounds by High Performance Liquid Chromatography (HPLC), Revision 1, December 1996, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.11960, 63.11980, and table 10 to subpart HHHHHHH of this part.

* * * * *

Subpart DDDDDD—[Amended]

■ 3. Section 63.11140 is revised to read as follows:

§ 63.11140 Am I subject to this subpart?

(a) On or before April 17, 2012, you are subject to this subpart if you own or operate a plant specified in § 61.61(c) of this chapter that produces polyvinyl chloride (PVC) or copolymers and is an area source of hazardous air pollutant (HAP) emissions. After April 17, 2012, you are subject to the requirements in this subpart if you own or operate one or more polyvinyl chloride and copolymers process units (PVCPU), as defined in § 63.12005, that are located at, or are part of, an area source of HAP.

(b) On or before April 17, 2012, this subpart applies to each new or existing affected source. The affected source is the collection of all equipment and activities in vinyl chloride service necessary to produce PVC and copolymers. An affected source does not include portions of your PVC and copolymers production operations that meet the criteria in § 61.60(b) or (c) of this chapter. After April 17, 2012, this subpart applies to each polyvinyl chloride and copolymers production affected source. The polyvinyl chloride and copolymers production affected source is the facility-wide collection of PVCPU, storage vessels, heat exchange systems, surge control vessels, and wastewater and process wastewater treatment systems that are associated with producing polyvinyl chloride and copolymers.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before October 6, 2006.

(i) You must meet the applicable requirements of §§ 63.11142(a), 63.11143(a) and (b), 63.11144(a) and 63.11145 for existing affected sources.

(ii) You must achieve compliance by the date specified in § 63.11141(a).

(iii) You must meet the applicable requirements of §§ 63.11142(b) through (f), 63.11143(c), 63.11144(b) and 63.11145 for existing affected sources by the compliance date specified in § 63.11141(c), after which time you are no longer subject to the requirements listed in paragraphs (b)(1)(i) and (ii) of this section.

(2) An affected source is new if you commenced construction or reconstruction of the affected source between October 6, 2006, and May 20, 2011.

(i) You must meet the applicable requirements of §§ 63.11142(a), 63.11143(a) and (b), 63.11144(a) and 63.11145 for new affected sources.

(ii) You must achieve compliance by the date specified in § 63.11141(b).

(3) If you are a new affected source as specified in paragraph (b)(2) of this section that commenced construction or reconstruction between October 6, 2006, and May 20, 2011, then after April 17, 2012, you are considered an existing affected source.

(i) You must meet the applicable requirements of §§ 63.11142(b) through (f), 63.11143(c), 63.11144(b) and 63.11145 for existing affected sources.

(ii) You must achieve compliance by the date specified in § 63.11141(d), after which time you are no longer subject to paragraphs (b)(2)(i) and (ii) of this section.

(4) An affected source is new if you commenced construction or reconstruction of the affected source after May 20, 2011.

(i) You must meet the applicable requirements of §§ 63.11142(b) through (f), 63.11143(c), 63.11144(b), and 63.11145 for new affected sources.

(ii) You must achieve compliance by the date specified in § 63.11141(e).

(iii) If components of an existing affected source are replaced such that the replacement meets the definition of reconstruction in § 63.2 and the reconstruction commenced after May 20, 2011, then the existing affected source becomes a reconstructed source and is subject to the relevant standards for a new affected source. The reconstructed source must comply with the requirements of paragraph (b)(4)(i) of this section for a new affected source upon initial startup of the reconstructed source or by April 17, 2012, whichever is later.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act. After April 17, 2012, the requirements of this subpart also do not apply to chemical manufacturing process units, as defined in § 63.101, that produce vinyl chloride monomer or other raw materials used in the production of polyvinyl chloride and copolymers.

(d) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under § 70.3(a) or § 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

(e) After the applicable compliance date specified in § 63.11141(c), (d) or (e), an affected source that is also subject to the provisions of 40 CFR part 61, subpart F, is required to comply with the provisions of this subpart and no longer has to comply with 40 CFR part 61, subpart F.

(f) After the applicable compliance date specified in § 63.11141(c), (d) or (e), an affected source that is also subject to the provisions of other 40 CFR part 60 or 40 CFR part 63 subparts is required to comply with this subpart and any other applicable 40 CFR part 60 and 40 CFR part 63 subparts.

■ 4. Section 63.11141 is revised to read as follows:

§ 63.11141 What are my compliance dates?

(a) If you own or operate an existing affected source as specified in § 63.11140(b)(1), then you must achieve compliance with the applicable provisions in this subpart specified in § 63.11140(b)(1)(i) by January 23, 2007.

(b) If you own or operate a new affected source as specified in § 63.11140(b)(2), then you must achieve compliance with the applicable provisions in this subpart as specified in § 63.11140(b)(2)(i) by the dates in paragraphs (b)(1) or (2) of this section.

(1) If you start up a new affected source on or before January 23, 2007, you must achieve compliance with the applicable provisions in this subpart not later than January 23, 2007.

(2) If you start up a new affected source after January 23, 2007, but before or on May 20, 2011, then you must achieve compliance with the provisions in this subpart upon startup of your affected source.

(c) If you own or operate an existing affected source as specified in § 63.11140(b)(1), then you must achieve compliance with the applicable provisions in this subpart specified in § 63.11140(b)(1)(iii) by April 17, 2015.

(d) If you own or operate an affected source that commenced construction or reconstruction between October 6, 2006, and May 20, 2011, then you must achieve compliance with the applicable provisions of this subpart specified in § 63.11140(b)(3) by April 17, 2015.

(e) If you own or operate a new affected source as specified in § 63.11140(b)(4), then you must achieve compliance with the applicable provisions in this subpart specified in § 63.11140(b)(4)(i) by the dates in paragraphs (e)(1) and (2) of this section.

(1) If you start up your affected source between May 20, 2011, and April 17, 2012, then you must achieve compliance with the applicable provisions in this subpart not later than April 17, 2012.

(2) If you start up your affected source after April 17, 2012, then you must achieve compliance with the provisions in this subpart upon startup of your affected source.

■ 5. Section 63.11142 is revised to read as follows:

§ 63.11142 What are the standards and compliance requirements for new and existing sources?

(a) You must meet all the requirements in 40 CFR part 61, subpart F, except for §§ 61.62 and 61.63.

(b) You must comply with each emission limit and standard specified in Table 1 to this subpart that applies to your existing affected source, and you must comply with each emission limit and standard specified in Table 2 to this subpart that applies to your new affected source.

(c) The emission limits, operating limits and work practice standards specified in this subpart apply at all times, including periods of startup, shutdown and malfunction.

(d) You must demonstrate initial compliance by the dates specified in § 63.11141.

(e) You must conduct subsequent performance testing according to the schedule specified in § 63.11905.

(f) You must meet the requirements of the applicable sections of 40 CFR part 63, subpart HHHHHHH, as specified in paragraphs (f)(1) through (19) of this section, except for the purposes of complying with this subpart, where the applicable sections of 40 CFR part 63, subpart HHHHHHH, as specified in paragraphs (f)(1) through (19) of this section reference Table 1 or Table 2 to subpart HHHHHHH, reference is made to Table 1 or Table 2 to this subpart.

(1) You must comply with the requirements of § 63.11880(b).

(2) You must comply with the requirements of §§ 63.11890(a) through 63.11890(d) and are subject to § 63.11895.

(3) You must comply with the requirements of § 63.11896, except for the purposes of complying with this subpart, where § 63.11896 refers to § 63.11870(d) of subpart HHHHHHH, reference is made to § 63.11140(b)(4) of this subpart.

(4) You must comply with the requirements of § 63.11900, except for the purposes of complying with this subpart, where § 63.11900 refers to § 63.11875 of subpart HHHHHHH, reference is made to § 63.11141 of this subpart.

(5) You must meet the requirements of § 63.11910 for initial and continuous compliance for storage vessels.

(6) You must meet the requirements of § 63.11915 for equipment leaks.

(7) You must meet the requirements of § 63.11920 for initial and continuous compliance for heat exchange systems.

(8) You must meet the requirements of § 63.11925 for initial and continuous compliance for process vents.

(9) You must meet the requirements of § 63.11930 for closed vent systems.

(10) You must meet the requirements of § 63.11935 for continuous emissions monitoring systems (CEMS) and continuous parameter monitoring systems (CPMS) to demonstrate initial and continuous compliance with the emission standards for process vents.

(11) You must meet the requirements of § 63.11940 for continuous monitoring requirements for control devices required to install CPMS to meet the emission limits for process vents.

(12) You must meet the requirements of § 63.11945 for performance testing requirements for process vents.

(13) You must meet the requirements of § 63.11950 for emissions calculations to be used for an emission profile by process of batch process operations.

(14) You must meet the requirements of § 63.11955 for initial and continuous compliance requirements for other emission sources.

(15) You must meet the requirements of § 63.11956 for ambient monitoring.

(16) You must meet the requirements of § 63.11960 for initial and continuous compliance requirements for stripped resin.

(17) You must meet the requirements of § 63.11965 through § 63.11980 for general, initial and continuous compliance, test methods and calculation procedures for wastewater.

(18) You must meet the notification and reporting requirements of § 63.11985.

(19) You must meet the recordkeeping requirements of §§ 63.11990 and 63.11995.

■ 6. Section 63.11143 is revised to read as follows:

§ 63.11143 What General Provisions apply to this subpart?

(a) All the provisions in part 61, subpart A of this chapter apply to this subpart.

(b) The provisions in subpart A of this part, applicable to this subpart are specified in paragraphs (b)(1) and (2) of this section.

(1) § 63.1(a)(1) through (10).

(2) § 63.1(b) except paragraph (b)(3), §§ 63.1(c) and 63.1(e).

(c) Section 63.11885 specifies which parts of the General Provisions in subpart A of this part apply to you.

■ 7. Section 63.11144 is revised to read as follows:

§ 63.11144 What definitions apply to this subpart?

(a) On and before April 17, 2012, the terms used in this subpart are defined in the Clean Air Act; §§ 61.02 and 61.61 of this chapter; and § 63.2 for terms used in the applicable provisions of subpart A of this part, as specified in § 63.11143(b).

(b) After April 17, 2012, terms used in this subpart are defined in the Clean Air Act; § 63.2; and § 63.12005.

■ 8. Section 63.11145 is revised to read as follows:

§ 63.11145 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a state, local or tribal agency. If the U.S. EPA Administrator has delegated authority to a state, local or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a state, local or tribal agency within your state.

(b) In delegating implementation and enforcement authority of this subpart to a state, local or tribal agency under subpart E of this part, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the state, local or tribal agency.

(1) Approval of an alternative means of emissions imitation under § 61.12(d) of this chapter.

(2) Approval of a major change to test methods under § 61.13(h) of this chapter. A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under § 61.14(g) of this chapter. A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to reporting under § 61.10. A ''major change to recordkeeping/reporting'' is defined in § 63.90.

■ 9. Table 1 and Table 2 are added to subpart DDDDDD to read as follows:

TABLE 1 TO SUBPART DDDDDD OF PART 63—EMISSION LIMITS AND STANDARDS FOR EXISTING AFFECTED SOURCES

For this type of emission point . . .	And for this air pollutant . . .	And for an affected source producing this type of PVC resin . . .	You must meet this emission limit . . .
PVC-only process vents [a]	Vinyl chloride	All resin types	5.3 parts per million by volume (ppmv).
	Total hydrocarbons	All resin types	46 ppmv measured as propane.
	Total organic HAP [b].	All resin types	140 ppmv.
	Dioxins/furans (toxic equivalency basis).	All resin types	0.13 nanograms per dry standard cubic meter (ng/dscm).
PVC-combined process vents [a].	Vinyl chloride	All resin types	0.56 ppmv.
	Total hydrocarbons	All resin types	2.3 ppmv measured as propane.
	Total organic HAP [b]	All resin types	29 ppmv.
	Dioxins/furans (toxic equivalency basis).	All resin types	0.076 ng/dscm.
Stripped resin	Vinyl chloride	Bulk resin	7.1 parts per million by weight (ppmw).
		Dispersion resin	1,500 ppmw.
		Suspension resin	36 ppmw.
		Suspension blending resin	140 ppmw.
		Copolymer resin	790 ppmw.
	Total non-vinyl chloride organic HAP	Bulk resin	170 ppmw.
		Dispersion resin	320 ppmw.
		Suspension resin	36 ppmw.
		Suspension blending resin	500 ppmw.
		Copolymer resin	1,900 ppmw.
Process Wastewater	Vinyl chloride	All resin types	2.1 ppmw.

TABLE 1 TO SUBPART DDDDDD OF PART 63—EMISSION LIMITS AND STANDARDS FOR EXISTING AFFECTED SOURCES—Continued

For this type of emission point . . .	And for this air pollutant . . .	And for an affected source producing this type of PVC resin . . .	You must meet this emission limit . . .
	Total non-vinyl chloride organic HAP	All resin types	0.018 ppmw.

[a] Emission limits at 3 percent oxygen, dry basis.
[b] Affected sources have the option to comply with either the total hydrocarbon limit or the total organic HAP limit.

TABLE 2 TO SUBPART DDDDDD OF PART 63—EMISSION LIMITS AND STANDARDS FOR NEW AFFECTED SOURCES

For this type of emission point . . .	And for this air pollutant . . .	And for an affected source producing this type of PVC resin . . .	You must meet this emission limit . . .
PVC-only process vents [a]	Vinyl chloride	All resin types	5.3 parts per million by volume (ppmv).
	Total hydrocarbons	All resin types	46 ppmv measured as propane
	Total organic HAP [b]	All resin types	140 ppmv.
	Dioxins/furans (toxic equivalency basis).	All resin types	0.13 nanograms per dry standard cubic meter (ng/dscm).
PVC-combined process vents [a].	Vinyl chloride	All resin types	0.56 ppmv.
	Total hydrocarbons	All resin types	2.3 ppmv measured as propane
	Total organic HAP [b]	All resin types	29 ppmv
	Dioxins/furans (toxic equivalency basis).	All resin types	0.076 ng/dscm.
Stripped resin	Vinyl chloride	Bulk resin	7.1 parts per million by weight (ppmw).
		Dispersion resin	1,500 ppmw.
		Suspension resin	36 ppmw.
		Suspension blending resin	140 ppmw.
		Copolymer resin	790 ppmw.
	Total non-vinyl chloride organic HAP	Bulk resin	170 ppmw.
		Dispersion resin	320 ppmw.
		Suspension resin	36 ppmw.
		Suspension blending resin	500 ppmw.
		Copolymer resin	1,900 ppmw.
Process Wastewater	Vinyl chloride	All resin types	2.1 ppmw.
	Total non-vinyl chloride organic HAP	All resin types	0.018 ppmw.

[a] Emission limits at 3 percent oxygen, dry basis.
[b] Affected sources have the option to comply with either the total hydrocarbon limit or the total organic HAP limit.

■ 10. Part 63 is amended by adding and reserving subparts FFFFFFF and GGGGGGG, and adding subpart HHHHHHH, to read as follows:

Subparts FFFFFFF and GGGGGGG—[Reserved]

Subpart HHHHHHH—National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production

What This Subpart Covers

Sec.

Subpart HHHHHHH—National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production

What This Subpart Covers

§ 63.11860 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants emitted from the production of polyvinyl chloride and copolymers at major sources. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.11865 Am I subject to the requirements in this subpart?

You are subject to the requirements in this subpart if you own or operate one or more polyvinyl chloride and copolymers production process units (PVCPU) as defined in § 63.12005 that are located at, or are part of, a major source of hazardous air pollutants (HAP) emissions as defined in § 63.2. The requirements of this subpart do not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act, or to chemical manufacturing process units, as defined in § 63.101, that produce vinyl chloride monomer or other raw materials used in the production of polyvinyl chloride and copolymers.

§ 63.11870 What is the affected source of this subpart?

(a) This subpart applies to each polyvinyl chloride and copolymers production affected source.

(b) The polyvinyl chloride and copolymers production affected source is the facility wide collection of PVCPU, storage vessels, heat exchange systems, surge control vessels, wastewater and process wastewater treatment systems that are associated with producing polyvinyl chloride and copolymers.

(c) An existing affected source is one for which construction was commenced on or before May 20, 2011, at a major source.

(d) A new affected source is one for which construction is commenced after May 20, 2011, at a major source.

(e) If components of an existing affected source are replaced such that the replacement meets the definition of reconstruction in § 63.2 and the reconstruction commenced after May 20, 2011, then the existing affected source becomes a reconstructed source and is subject to the relevant standards for a new affected source. The reconstructed source must comply with the requirements for a new affected source upon initial startup of the reconstructed source or by April 17, 2012, whichever is later.

§ 63.11871 What is the relationship to 40 CFR part 61, subpart F?

After the applicable compliance date specified in § 63.11875(a), (b) or (c), an affected source that is also subject to the provisions of 40 CFR part 61, subpart F, is required to comply with the provisions of this subpart and no longer has to comply with 40 CFR part 61, subpart F.

§ 63.11872 What is the relationship to other subparts in this part?

After the applicable compliance date specified in § 63.11875(a), (b) or (c), an affected source that is also subject to the provisions of other subparts in 40 CFR part 60 or this part is required to comply with this subpart and any other applicable subparts in 40 CFR part 60 or this part.

§ 63.11875 When must I comply with this subpart?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart no later than April 17, 2015. On or after April 17, 2015, any such existing affected source is no longer subject to the provisions of 40 CFR part 61, subpart F.

(b) If you start up a new affected source on or before April 17, 2012, you must achieve compliance with the provisions of this subpart no later than April 17, 2012. On or after April 17, 2012, any such new affected source is not subject to the provisions of 40 CFR part 61, subpart F.

(c) If you start up a new affected source after April 17, 2012, you must achieve compliance with the provisions of this subpart upon startup of your affected source. Upon startup, any such new affected source is not subject to the provisions of 40 CFR part 61, subpart F.

(d) You must meet the notification requirements in §§ 63.9 and 63.11985 according to the dates specified in those sections. Some of the notifications must be submitted before you are required to comply with the emission limits and standards in this subpart.

Emission Limits, Operating Limits and Work Practice Standards

§ 63.11880 What emission limits, operating limits and standards must I meet?

(a) You must comply with each emission limit and standard specified in Table 1 to this subpart that applies to your existing affected source, and you must comply with each emission limit and standard specified in Table 2 to this subpart that applies to your new affected source.

(b) You must establish an operating limit for each operating parameter required to be monitored in § 63.11925, and you must establish each operating limit as an operating range, minimum operating level or maximum operating level. You must comply with each established operating limit.

(c) You must comply with the emission limits and standards specified in §§ 63.11910 through 63.11980 that apply to your affected source.

General Compliance Requirements

§ 63.11885 What parts of the General Provisions apply to me?

Table 4 to this subpart specifies which parts of the General Provisions in subpart A of this part apply to you.

§ 63.11890 What are my additional general requirements for complying with this subpart?

(a) The emission limits, operating limits and work practice standards specified in this subpart apply at all times, including periods of startup, shutdown or malfunction.

(b) At all times, you must operate and maintain your affected source, including associated air pollution control components and monitoring system components, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(c) You must install, calibrate, maintain, and operate all monitoring system components according to §§ 63.8, 63.11935(b) and (c), and paragraphs (c)(1) and (2) of this section.

(1) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), you must operate the continuous monitoring system at all times the affected source is operating. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(2) You may not use data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other required data collection periods in assessing the operation of the control device and associated control system. You must report any periods for which the monitoring system failed to collect required data.

(d) A deviation means any of the cases listed in paragraphs (d)(1) through (7) of this section.

(1) Any instance in which an affected source subject to this subpart, or an owner or operator of such a source, fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limit, operating limit or work practice standard.

(2) When a performance test indicates that emissions of a pollutant in Table 1 or 2 to this subpart are exceeding the emission standard for the pollutant specified in Table 1 or 2 to this subpart.

(3) When a 3-hour block average from a continuous emissions monitor, as required by § 63.11925(c)(1) through (3), exceeds an emission limit in Table 1 or 2 to this subpart.

(4) When the average value of a monitored operating parameter, based on the data averaging period for compliance specified in Table 5 to this subpart, does not meet the operating limit established in § 63.11880(b).

(5) When an affected source discharges directly to the atmosphere from any of the sources specified in paragraphs (d)(5)(i) through (iv) of this section.

(i) A pressure relief device, as defined in § 63.12005.

(ii) A bypass, as defined in § 63.12005.

(iii) A closed vent system in vacuum service.

(iv) A closure device on a pressure vessel.

(6) Any instance in which the affected source subject to this subpart, or an owner or operator of such a source, fails to meet any term or condition specified in paragraph (d)(6)(i) or (ii) of this section.

(i) Any term or condition that is adopted to implement an applicable requirement in this subpart.

(ii) Any term or condition relating to compliance with this subpart that is included in the operating permit for any affected source required to obtain such a permit.

(7) Any failure to collect required data, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

§ 63.11895 How do I assert an affirmative defense for exceedance of emission standard during malfunction?

In response to an action to enforce the standards set forth in § 63.11880, you may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) Evidence. To establish the affirmative defense in any action to enforce such a standard, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The violation:

(i) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner.

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices.

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for.

(iv) Were not part of a recurring pattern indicative of inadequate design, operation or maintenance.

(2) Repairs were made as expeditiously as possible when violation occurred. Off-shift and overtime labor were used, to the extent practicable to make these repairs.

(3) The frequency, amount and duration of the violation (including any bypass) were minimized to the maximum extent practicable.

(4) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(5) All possible steps were taken to minimize the impact of the violations on ambient air quality, the environment and human health.

(6) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices.

(7) All of the actions in response to the violations were documented by properly signed, contemporaneous operating logs.

(8) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions.

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the violations resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) Report. The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator in the compliance report required by § 63.11985(b) with all necessary supporting documentation, that it has met the requirements set forth in this section.

§ 63.11896 What am I required to do if I make a process change at my affected source?

If you make a process change to an existing affected source that does not meet the criteria to become a new affected source in § 63.11870(d), you must comply with the requirements in paragraph (a) of this section and the testing and reporting requirements in paragraphs (c) and (d) of this section. If you make a process change to a new affected source, you must comply with the requirements in paragraph (b) of this section and the testing and reporting requirements in paragraphs (c) and (d) of this section. Refer to § 63.12005 for the definition of process changes.

(a) You must demonstrate that the changed process unit or component of the affected facility is in compliance with the applicable requirements for an existing affected source. You must demonstrate initial compliance with the emission limits and establish any applicable operating limits in § 63.11880 within 180 days of the date of start-up of the changed process unit or component of the affected facility. You must demonstrate compliance with any applicable work practice standards upon startup of the changed process unit or component of the affected facility.

(b) You must demonstrate that all changed emission points are in compliance with the applicable requirements for a new affected source. You must demonstrate initial compliance with the emission limits and establish any applicable operating limits in § 63.11880 within 180 days of the date of startup of the changed process unit or component of the affected facility. You must demonstrate compliance with any applicable work practice standards upon startup of the changed process unit or component of the affected facility.

(c) For process changes, you must demonstrate continuous compliance with your emission limits and standards, operating limits, and work practice standards according to the procedures and frequency in §§ 63.11910 through 63.11980.

(d) For process changes, you must submit the report specified in § 63.11985(b)(4)(iii).

Testing and Compliance Requirements

§ 63.11900 By what date must I conduct initial performance testing and monitoring, establish any applicable operating limits and demonstrate initial compliance with my emission limits and work practice standards?

(a) For existing affected sources, you must establish any applicable operating limits required in § 63.11880 and demonstrate initial compliance with the emission limits and standards specified in Tables 1 and 3 to this subpart, as applicable, no later than 180 days after the compliance date specified in § 63.11875 and according to the applicable provisions in § 63.7(a)(2).

(b) For existing affected sources, you must demonstrate initial compliance with any applicable work practice standards required in § 63.11880 no later than the compliance date specified in § 63.11875 and according to the applicable provisions in § 63.7(a)(2).

(c) For new or reconstructed affected sources, you must establish any applicable operating limits required in § 63.11880, and demonstrate initial compliance with the emission limits and standards specified in Tables 2 and 3 to this subpart, as applicable, no later than 180 days after the effective date of publication of the final rule in the **Federal Register** or within 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) For new and reconstructed affected sources, you must demonstrate initial compliance with any applicable work practice standards required in § 63.11880 no later than the startup date of the affected source or the effective date of publication of the final rule in the **Federal Register**, whichever is later, and according to the applicable provisions in § 63.7(a)(2).

(e) If you demonstrate initial compliance using a performance test and a force majeure is about to occur, occurs, or has occurred for which you intend to assert a claim of force majeure, then you must follow the procedures in § 63.7(a)(4).

§ 63.11905 When must I conduct subsequent performance testing and monitoring to demonstrate continuous compliance?

Following the date of your initial demonstration of compliance in § 63.11900, you must conduct subsequent performance testing and monitoring to demonstrate continuous compliance with your emission limits, operating limits, and work practice standards according to the procedures and frequency in §§ 63.11910 through 63.11980. If you make a process change as specified in § 63.11896, such that a different emission limit or operating parameter limit applies, you must conduct a performance test according to § 63.11896.

§ 63.11910 What are my initial and continuous compliance requirements for storage vessels?

You must comply with the requirements specified in Table 3 to this subpart for each storage vessel in HAP service.

(a) For each fixed roof storage vessel used to comply with the requirements specified in Table 3 to this subpart, you must meet the requirements in paragraphs (a)(1) through (4) of this section. If you elect to use a fixed roof storage vessel vented to a closed vent system and control device, the closed vent system and control device must meet the requirements in §§ 63.11925 through 63.11950.

(1) *Design requirements.* (i) The fixed roof must be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(ii) Each opening in the fixed roof must be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device.

(2) *Operating requirements.* (i) Except as specified in paragraph (a)(2)(ii) of this section, the fixed roof must be installed with each closure device secured in the closed position.

(ii) Opening of closure devices or removal of the fixed roof is allowed under conditions specified in paragraphs (a)(2)(ii)(A) and (B) of this section.

(A) A closure device may be opened or the roof may be removed when needed to provide access.

(B) A conservation vent that vents to the atmosphere is allowed during normal operations to maintain the tank internal operating pressure within tank design specifications. Normal operating conditions that may require these devices to open are during those times when the internal pressure of the storage vessel is outside the internal pressure operating range for the storage vessel as a result of loading or unloading operations or diurnal ambient temperature fluctuations.

(iii) During periods of planned routine maintenance of a control device, operate the storage vessel in accordance with paragraphs (a)(2)(iii)(A) and (B) of this section. You must keep the records specified in § 63.11990(b)(6).

(A) Do not add material to the storage vessel during periods of planned routine maintenance.

(B) Limit periods of planned routine maintenance for each control device to no more than 360 hours per year (hr/yr).

(3) *Inspection and monitoring requirements.* (i) Visually inspect the fixed roof and its closure devices for defects initially and at least once per calendar year except as specified in paragraph (a)(3)(ii) of this section. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the wall of the storage vessel; broken, cracked or otherwise damaged seals, or gaskets on closure devices; and broken or missing hatches, access covers, caps or other closure devices.

(ii) The inspection requirement specified in paragraph (a)(3)(i) of this section does not apply to parts of the fixed roof that you determine are unsafe to inspect because operating personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (a)(3)(i) of this section, provided you comply with the requirements specified in paragraphs (a)(3)(ii)(A) and (B) of this section.

(A) You prepare and maintain at the plant site written documentation that identifies all parts of the fixed roof that are unsafe to inspect and explains why such parts are unsafe to inspect.

(B) You develop and implement a written plan and schedule to conduct inspections the next time alternative storage capacity becomes available and the storage vessel can be emptied or temporarily removed from service, as necessary, to complete the inspection. The required inspections must be performed as frequently as practicable but do not need to be performed more than once per calendar year. You must maintain a copy of the written plan and schedule at the plant site.

(4) *Repair requirements.* (i) Complete repair of a defect as soon as possible, but no later than 45 days after detection. You must comply with the requirements in this paragraph (a)(4)(i) except as provided in paragraph (a)(4)(ii) of this section.

(ii) Repair of a defect may be delayed beyond 45 days if you determine that repair of the defect requires emptying or temporary removal from service of the storage vessel and no alternative storage capacity is available at the site to accept the removed material. In this case, repair the defect the next time alternative storage capacity becomes available and the storage vessel can be emptied or temporarily removed from service.

(b) If you elect to use an internal floating roof storage vessel or external floating roof storage vessel to comply with the requirements specified in Table 3 to this subpart, you must meet all requirements of §§ 63.1060 through 63.1067 of subpart WW of this part for internal floating roof storage vessels or external floating roof storage vessels, as applicable.

(c) For each pressure vessel used to comply with the requirements specified in Table 3 to this subpart, you must meet the requirements in paragraphs (c)(1) through (4) of this section.

(1) Whenever the pressure vessel is in hazardous air pollutants (HAP) service, you must operate the pressure vessel as a closed system that does not vent to the atmosphere, e.g., during filling, emptying and purging. The vent stream during filling, emptying and purging must meet the requirements of § 63.11925(a) and (b).

(2) Each opening in the pressure vessel must be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps or other open spaces in the closure device or between the perimeter of the opening and the closure device.

(3) All potential leak interfaces must be monitored annually for leaks using the procedures specified in § 63.11915 and you may adjust for background concentration. You must comply with the recordkeeping provisions specified in § 63.11990(b)(4) and the reporting provisions specified in § 63.11985(a)(1), (b)(1), and (b)(10).

(4) Pressure vessel closure devices must not discharge to the atmosphere. Any such release (e.g., leak) constitutes a violation of this rule. You must submit to the Administrator as part of your compliance report the information specified in § 63.11985(b)(10). This report is required even if you elect to follow the procedures specified in § 63.11895 to establish an affirmative defense.

§ 63.11915 What are my compliance requirements for equipment leaks?

For equipment in HAP service (as defined in § 63.12005), you must comply with the requirements in paragraphs (a) through (c) of this section.

(a) Requirement for certain equipment in subpart UU of this part. You must comply with §§ 63.1020 through 63.1025, 63.1027, 63.1029 through 63.1032, and 63.1034 through 63.1039 of subpart UU of this part.

(b) Requirements for pumps, compressors, and agitators. You must meet the requirements of paragraphs (b)(1) and (2) of this section. For each type of equipment specified in paragraphs (b)(1) and (2) of this section, you must also meet the requirements of paragraph (a) of this section.

(1) Rotating pumps. HAP emissions from seals on all rotating pumps in HAP service are to be minimized by either installing sealless pumps, pumps with double mechanical seals or equivalent equipment, or by complying with the requirements of 40 CFR part 63, subpart UU for rotating pumps. If double mechanical seals are used, emissions from the seals are to be minimized by maintaining the pressure between the two seals so that any leak that occurs is into the pump; by complying with § 63.11925(a) and (b); or equivalent equipment or procedures approved by the Administrator.

(2) Reciprocating pumps, rotating compressors, reciprocating compressors and agitators. HAP emissions from seals on all reciprocating pumps, rotating compressors, reciprocating compressors and agitators in HAP service are to be minimized by either installing double mechanical seals or equivalent equipment, or by complying with the requirements of 40 CFR part 63, subpart UU for reciprocating pumps, rotating compressors, reciprocating compressors and/or agitators. If double mechanical seals are used, HAP emissions from the seals are to be minimized by maintaining the pressure between the two seals so that any leak that occurs is into the pump; by complying with § 63.11925(a) and (b); or equivalent equipment or procedures approved by the Administrator.

(c) Requirements for pressure relief devices. For pressure relief devices in HAP service, as defined in § 63.12005, you must meet the requirements of this

paragraph (c) and paragraph (a) of this section, you must comply with the recordkeeping provisions in § 63.11990(c), and you must comply with the reporting provisions in §§ 63.11985(a)(2), (b)(2) and (c)(7).

(1) For pressure relief devices in HAP service that discharge directly to the atmosphere without first meeting the process vent emission limits in Table 1 or 2 to this subpart by routing the discharge to a closed vent system and control device designed and operated in accordance with the requirements in §§ 63.11925 through 63.11950, you must install, maintain, and operate release indicators as specified in paragraphs (c)(1)(i) and (ii) of this section. Any release to the atmosphere without meeting the process vent emission limits in Table 1 or 2 to this subpart, constitutes a violation of this rule. You must submit the report specified in § 63.11985(c)(7), as described in paragraph (c)(1)(iii) of this section.

(i) A release indicator must be properly installed on each pressure relief device in such a way that it will indicate when an emission release has occurred.

(ii) Each indicator must be equipped with an alert system that will notify an operator immediately and automatically when the pressure relief device is open. The alert must be located such that the signal is detected and recognized easily by an operator.

(iii) For any instance that the release indicator indicates that a pressure relief device is open, you must notify operators that a pressure release has occurred, and, within 10 days of the release, you must submit to the Administrator the report specified in § 63.11985(c)(7). This report is required even if you elect to follow the procedures specified in § 63.11895 to establish an affirmative defense.

(2) For pressure relief devices in HAP service that discharge directly to a closed vent system and control device designed and operated in accordance with the requirements in §§ 63.11925 through 63.11950, and are required to meet process vent emission limits in Table 1 or 2 to this subpart. Any release to the atmosphere without meeting the process vent emission limits in Table 1 or 2 to this subpart, constitutes a violation of this rule. You must notify operators that a pressure release has occurred, and, within 10 days of the release, you must submit to the Administrator the report specified in § 63.11985(c)(7). This report is required even if you elect to follow the procedures specified in § 63.11895(b) to establish an affirmative defense.

§ 63.11920 What are my initial and continuous compliance requirements for heat exchange systems?

(a) Except as provided in paragraph (b) of this section, you must perform monitoring to identify leaks of volatile organic compounds from each heat exchange system in HAP service subject to the requirements of this subpart according to the procedures in paragraphs (a)(1) through (4) of this section.

(1) *Monitoring locations for closed-loop recirculation heat exchange systems.* For each closed loop recirculating heat exchange system, you must collect and analyze a sample from the location(s) described in either paragraph (a)(1)(i) or (ii) of this section.

(i) Each cooling tower return line prior to exposure to air for each heat exchange system in HAP service.

(ii) Selected heat exchanger exit line(s) so that each heat exchanger or group of heat exchangers within a heat exchange system is covered by the selected monitoring location(s).

(2) *Monitoring locations for once-through heat exchange systems.* For each once-through heat exchange system, you must collect and analyze a sample from the location(s) described in paragraph (a)(2)(i) of this section. You may also elect to collect and analyze an additional sample from the location(s) described in paragraph (a)(2)(ii) of this section.

(i) Selected heat exchanger exit line(s) so that each heat exchanger or group of heat exchangers in HAP service within a heat exchange system is covered by the selected monitoring location(s).

(ii) The inlet water feed line for a once-through heat exchange system prior to any heat exchanger. If multiple heat exchange systems use the same water feed (i.e., inlet water from the same primary water source), you may monitor at one representative location and use the monitoring results for that sampling location for all heat exchange systems that use that same water feed.

(3) *Monitoring method.* You must determine the total strippable volatile organic compounds concentration or vinyl chloride concentration at each monitoring location using one of the analytical methods specified in paragraphs (a)(3)(i) through (iii) of this section.

(i) Determine the total strippable volatile organic compounds concentration (in parts per million by volume) as methane from the air stripping testing system using Modified El Paso Method (incorporated by reference, see § 63.14) using a flame ionization detector analyzer.

(ii) Determine the total strippable volatile organic compounds concentration (in parts per billion by weight) in the cooling water using Method 624 at 40 CFR part 136, appendix A. The target list of compounds shall be generated based on a pre-survey sample and analysis by gas chromatography/mass spectrometry and process knowledge to include all compounds that can potentially leak into the cooling water. If Method 624 of part 136, appendix A is not applicable for all compounds that can potentially leak into the cooling water for a given heat exchange system, you cannot use this monitoring method for that heat exchange system.

(iii) Determine the vinyl chloride concentration (in parts per billion by weight) in the cooling water using Method 107 at 40 CFR part 61, appendix A.

(4) *Monitoring frequency.* You must determine the total strippable volatile organic compounds or vinyl chloride concentration at each monitoring location at the frequencies specified in paragraphs (a)(4)(i) and (ii) of this section.

(i) For heat exchange systems for which you have not delayed repair of any leaks, monitor at least monthly. You may elect to monitor more frequently than the minimum frequency specified in this paragraph.

(ii) If you elect to monitor the inlet water feed line for a once-through heat exchange system as provided in paragraph (a)(2)(ii) of this section, you must monitor the inlet water feed line at the same frequency used to monitor the heat exchange exit line(s), as required in paragraph (a)(2)(i) of this section.

(b) A heat exchange system is not subject to the monitoring requirements in paragraph (a) of this section if it meets any one of the criteria in paragraphs (b)(1) through (3) of this section.

(1) All heat exchangers that are in HAP service within the heat exchange system operate with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side.

(2) The heat exchange system does not contain any heat exchangers that are in HAP service.

(3) The heat exchange system has a maximum cooling water flow rate of 10 gallons per minute or less.

(c) The leak action levels for both existing and new sources are specified in paragraphs (c)(1) through (3) of this section.

(1) If you elect to monitor your heat exchange system by using the

monitoring method specified in paragraph (a)(3)(i) of this section, then the leak action level is a total strippable volatile organic compounds concentration (as methane) in the stripping gas of 3.9 parts per million by volume.

(2) If you elect to monitor your heat exchange system by using the monitoring method specified in paragraph (a)(3)(ii) of this section, then the leak action level is a total strippable volatile organic compounds concentration in the cooling water of 50 parts per billion by weight.

(3) If you elect to monitor your heat exchange system by using the monitoring method specified in paragraph (a)(3)(iii) of this section, then the leak action level is a vinyl chloride concentration in the cooling water of 50 parts per billion by weight.

(d) A leak is defined as specified in paragraph (d)(1) or (2) of this section, as applicable.

(1) For once-through heat exchange systems for which you monitor the inlet water feed, as described in paragraph (a)(2)(ii) of this section, a leak is detected if the difference in the measurement value of the sample taken from a location specified in paragraph (a)(2)(i) of this section and the measurement value of the corresponding sample taken from the location specified in paragraph (a)(2)(ii) of this section equals or exceeds the leak action level.

(2) For all other heat exchange systems, a leak is detected if a measurement value taken according to the requirements in paragraph (a) of this section equals or exceeds the leak action level.

(e) If a leak is detected, you must repair the leak to reduce the measured concentration to below the applicable action level as soon as practicable, but no later than 45 days after identifying the leak, except as specified in paragraphs (f) and (g) of this section. Repair includes re-monitoring as specified in paragraph (a) of this section to verify that the measured concentration is below the applicable action level. Actions that you can take to achieve repair include but are not limited to:

(1) Physical modifications to the leaking heat exchanger, such as welding the leak or replacing a tube;

(2) Blocking the leaking tube within the heat exchanger;

(3) Changing the pressure so that water flows into the process fluid;

(4) Replacing the heat exchanger or heat exchanger bundle; or

(5) Isolating, bypassing or otherwise removing the leaking heat exchanger from service until it is otherwise repaired.

(f) If you detect a leak when monitoring a cooling tower return line or heat exchanger exit line under paragraph (a) of this section, you may conduct additional monitoring following the requirements in paragraph (a) of this section to further isolate each heat exchanger or group of heat exchangers in HAP service within the heat exchange system for which the leak was detected. If you do not detect any leaks when conducting additional monitoring for each heat exchanger or group of heat exchangers, the heat exchange system is excluded from repair requirements in paragraph (e) of this section.

(g) The delay of repair action level is defined as either a total strippable volatile organic compounds concentration (as methane) in the stripping gas of 39 parts per million by volume or a total strippable volatile organic compounds concentration in the cooling water of 500 parts per billion by weight or a vinyl chloride concentration in the cooling water of 500 parts per billion by weight. While you remain below the repair action level, you may delay the repair of a leaking heat exchanger only if one of the conditions in paragraphs (g)(1) or (2) of this section is met. If you exceed the repair action level you must repair according to paragraph (e) of this section. You must determine if a delay of repair is necessary as soon as practicable, but no later than 45 days after first identifying the leak.

(1) If the repair is technically infeasible without a shutdown and the total strippable volatile organic compounds or vinyl chloride concentration is initially and remains less than the delay of repair action level for all monitoring periods during the delay of repair, you may delay repair until the next scheduled shutdown of the heat exchange system. If, during subsequent monitoring, the total strippable volatile organic compounds or vinyl chloride concentration is equal to or greater than the delay of repair action level, you must repair the leak within 30 days of the monitoring event in which the total strippable volatile organic compounds or vinyl chloride concentration was equal to or exceeded the delay of repair action level.

(2) If the necessary equipment, parts, or personnel are not available and the total strippable volatile organic compounds or vinyl chloride concentration is initially and remains less than the delay of repair action level for all monitoring periods during the delay of repair, you may delay the repair for a maximum of 120 days from the day the leak was first identified. You must demonstrate that the necessary equipment, parts or personnel were not available. If, during subsequent monthly monitoring, the total strippable volatile organic compounds or vinyl chloride concentration is equal to or greater than the delay of repair action level, you must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded the total strippable volatile organic compounds or vinyl chloride delay of repair action level.

(h) To delay the repair under paragraph (g) of this section, you must record the information in paragraphs (h)(1) through (4) of this section.

(1) The reason(s) for delaying repair.

(2) A schedule for completing the repair as soon as practical.

(3) The date and concentration of the leak as first identified and the results of all subsequent monitoring events during the delay of repair.

(4) An estimate of the potential emissions from the leaking heat exchange system following the procedures in paragraphs (h)(4)(i) and (ii) of this section.

(i) Determine the total strippable volatile organic compounds or vinyl chloride concentration in the cooling water, in parts per billion by weight. If the Modified El Paso Method is used, calculate the total strippable volatile organic compounds concentration in the cooling water using equation 7–1 from Modified El Paso Method (incorporated by reference, see § 63.14) and the total strippable volatile organic compounds concentration measured in the stripped air.

(ii) Calculate the emissions for the leaking heat exchange system by multiplying the volatile organic compounds or vinyl chloride concentration in the cooling water, ppbw, by the flow rate of the cooling water at the selected monitoring location and by the expected duration of the delay according to Equation 1 of this section. The flow rate may be based on direct measurement, pump curves, heat balance calculations or other engineering methods.

$$E_L = (C_{VC})(10^{-9})(V_{CW})(\rho_{CW})(60)(D_{delay}) \quad \text{(Eq. 1)}$$

Where:

E_L = Emissions from leaking heat exchange system, pounds of volatile organic compounds or vinyl chloride.

C_{VC} = Actual measured concentration of total strippable volatile organic compounds or vinyl chloride measured in the cooling water, parts per billion by weight (ppbw).

V_{CW} = Total volumetric flow rate of cooling water, gallons per minute (gpm).

ρ_{CW} = Density of cooling water, pounds per gallon (lb/gal).

D_{delay} = Expected duration of the repair delay, days.

§ 63.11925 What are my initial and continuous compliance requirements for process vents?

Each process vent must meet the requirements of paragraphs (a) through (h) of this section.

(a) *Emission limits.* Each process vent must meet the emission limits in Table 1 or 2 to this subpart prior to the vent stream being exposed to the atmosphere. The emission limits in Table 1 or 2 to this subpart apply at all times. The emission limits in Table 1 or 2 to this subpart must not be met through dilution.

(b) *Closed vent systems and control devices.* Each batch process vent, continuous process vent and miscellaneous vent that is in HAP service must be routed through a closed vent system to a control device. All gas streams routed to the closed vent system and control device must be for a process purpose and not for the purpose of diluting the process vent to meet the emission limits in Table 1 or 2 to this subpart. Each control device used to comply with paragraph (a) of this section must meet the requirements of §§ 63.11925 and 63.11940, and all closed vent systems must meet the requirements in § 63.11930. You must not use a flare to comply with the emission limits in Table 1 or 2 to this subpart.

(c) *General monitoring requirements.* Except as provided in paragraphs (c)(1) through (3) of this section, for each control device used to comply with the process vent emission limit specified in Table 1 or 2 to this subpart, you must install and operate a continuous parameter monitoring system (CPMS) to monitor each operating parameter specified in § 63.11940(a) through (h) to comply with your operating limit(s) required in § 63.11880(b).

(1) Hydrogen chloride continuous emission monitoring system (CEMS). In lieu of establishing operating limits in § 63.11880(b) and using CPMS to comply with the operating limits, as specified in § 63.11940(a) through (h), upon promulgation of a performance specification for hydrogen chloride CEMS, new and existing sources have the option to install a hydrogen chloride CEMS to demonstrate initial and continuous compliance with the hydrogen chloride emission limit for process vents, as specified in paragraphs (d) and (e) of this section.

(2) Dioxin/furan CEMS. In lieu of establishing operating limits in § 63.11880(b) and using CPMS to comply with the operating limits as specified in § 63.11940(a) through (h), upon promulgation of a performance specification for dioxin/furan CEMS, new and existing sources have the option to install a dioxin/furan CEMS to demonstrate initial and continuous compliance with the dioxins/furan emission limit for process vents, as specified in paragraphs (d) and (e) of this section.

(3) Total hydrocarbon CEMS. In lieu of establishing operating limits in § 63.11880(b) and using CPMS to comply with the operating limits as specified in § 63.11940(a) through (h), new and existing affected sources have the option to install a total hydrocarbon CEMS to demonstrate initial and continuous compliance with the total hydrocarbons or total organic HAP emission limit for process vents, as specified in paragraphs (d) and (e) of this section.

(d) *Initial compliance.* To demonstrate initial compliance with the emission limits in Table 1 or 2 to this subpart, you must comply with paragraphs (d)(1) through (5) of this section.

(1) You must conduct an initial inspection as specified in § 63.11930(d) for each closed vent system.

(2) For each CEMS and CPMS required or that you elect to use as specified in paragraph (c) of this section, you must prepare the quality control program and site-specific performance evaluation test plan as specified in § 63.11935(b) and site-specific monitoring plan specified in § 63.11935(c), respectively.

(3) For each CEMS and CPMS required or that you elect to use as specified in paragraph (c) of this section, you must install, operate, and maintain the CEMS and CPMS as specified in §§ 63.11935(b) and (c), respectively, and you must conduct an initial site-specific performance evaluation test according to your site-specific monitoring plan and §§ 63.11935(b)(3) and (c)(4), respectively.

(4) For each emission limit for which you use a CEMS to demonstrate compliance, you must meet the requirements specified in § 63.11890(c), and you must demonstrate initial compliance with the emission limits in Table 1 or 2 to this subpart based on 3-hour block averages of CEMS data collected at the minimum frequency specified in § 63.11935(b)(2) and calculated using the data reduction method specified in § 63.11935(e). For a CEMS used on a batch operation, you may use a data averaging period based on an operating block in lieu of the 3-hour averaging period.

(5) For each emission limit in Table 1 or 2 for which you do not use a CEMS to demonstrate compliance, you must meet the requirements of paragraphs (d)(5)(i) and (ii) of this section.

(i) You must conduct an initial performance test according to the requirements in § 63.11945 to demonstrate compliance with the total hydrocarbons or total organic HAP emission limit, vinyl chloride emission limit, hydrogen chloride emission limit, and dioxin/furan emission limit in Table 1 or 2 to this subpart.

(ii) During the performance test specified in paragraph (d)(5)(i) of this section, for each CPMS installed and operated as specified in paragraph (c) of this section, you must establish an operating limit as the operating parameter range, minimum operating parameter level, or maximum operating parameter level specified in § 63.11935(d). You must meet the requirements specified in § 63.11890(c). Each operating limit must be based on the data averaging period for compliance specified in Table 5 to this subpart using data collected at the minimum frequency specified in § 63.11935(c)(2) and calculated using the data reduction method specified in § 63.11935(e). For a CPMS used on a batch operation, you may use a data averaging period based on an operating block in lieu of the averaging period specified in Table 5 to this subpart.

(e) *Continuous compliance.* To demonstrate continuous compliance with the emission limits in Table 1 or 2 to this subpart for each process vent, you must comply with paragraphs (e)(1) through (5) of this section.

(1) You must meet the requirements in § 63.11930 for each closed vent system.

(2) You must operate and maintain each CEMS and CPMS required in paragraph (c) of this section as specified in § 63.11935(b) and (c), respectively.

(3) For each emission limit for which you use a CEMS to demonstrate compliance, you must meet the requirements in paragraphs (e)(3)(i) and (ii) of this section.

(i) You must conduct a periodic site-specific CEMS performance evaluation test according to your quality control program and site-specific performance evaluation test plan specified in § 63.11935(b)(1).

(ii) You must demonstrate continuous compliance with the emission limits in Table 1 or 2 to this subpart based on 3-hour block averages of CEMS data collected at the minimum frequency specified in § 63.11935(b)(2), and calculated using the data reduction method specified in § 63.11935(e). You must meet the requirements specified in § 63.11890(c). For a CEMS used on a batch operation, you may use a data averaging period based on an operating block in lieu of the 3-hour averaging period.

(4) For each emission limit for which you do not use a CEMS to demonstrate compliance, you must meet the requirements of paragraphs (e)(4)(i) and (ii) of this section.

(i) You must conduct a performance test once every 5 years according to the requirements in § 63.11945 for each pollutant in Table 1 or 2 to this subpart.

(ii) For each CPMS operated and maintained as specified in paragraph (e)(2) of this section, you must meet the requirements specified in paragraphs (e)(4)(ii)(A) through (C) of this section.

(A) You must conduct periodic site-specific CPMS performance evaluation tests according to your site-specific monitoring plan and § 63.11935(c).

(B) For each control device being monitored, you must continuously collect CPMS data consistent with § 63.11890(c) and your site-specific monitoring plan. You must continuously determine the average value of each monitored operating parameter based on the data collection and reduction methods specified in §§ 63.11935(c)(2) and 63.11935(e), and the applicable data averaging period for compliance specified in Table 5 to this subpart for all periods the process is operating. For a CPMS used on a batch operation, you may use a data averaging period based on an operating block in lieu of the averaging periods specified in Table 5 to this subpart.

(C) You must demonstrate continuous compliance with each operating limit established in paragraph (d)(5)(ii) of this section using these average values calculated in paragraph (e)(4)(ii)(B) of this section.

(5) Each closed vent system and control device used to comply with an emission limit in Table 1 or 2 to this subpart must be operated at all times when emissions are vented to, or collected by, these systems or devices.

(f) To demonstrate compliance with the dioxin/furan toxic equivalency emission limit specified in Table 1 or 2 to this subpart, you must determine dioxin/furan toxic equivalency as specified in paragraphs (f)(1) through (3) of this section.

(1) Measure the concentration of each dioxin/furan (tetra-through octachlorinated) congener emitted using Method 23 at 40 CFR part 60, appendix A–7.

(2) For each dioxin/furan (tetra-through octachlorinated) congener measured in accordance with paragraph (f)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 6 to this subpart.

(3) Sum the products calculated in accordance with paragraph (f)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

(g) *Emission profile.* You must characterize each process vent by developing an emissions profile for each contributing continuous process vent, miscellaneous vent and batch process vent according to paragraphs (g)(1) through (3) of this section.

(1) For batch process vents, the emissions profile must:

(i) Describe the characteristics of the batch process vent under worst-case conditions.

(ii) Determine emissions per episode and batch process vent emissions according to the procedures specified in § 63.11950.

(2) For continuous process vents, the flow rate and concentration must be determined according to paragraphs (g)(2)(i) through (iii) or according to paragraph (g)(2)(iv):

(i)(A) Method 1 or 1A of 40 CFR part 60, appendix A–1, as appropriate, shall be used for selection of the sampling site. The sampling site shall be after the last recovery device (if any recovery devices are present) but prior to being combined with any other continuous process vent, batch process vent, or miscellaneous vent, prior to the inlet of any control device that is present and prior to release to the atmosphere.

(B) No traverse site selection method is needed for vents smaller than 0.10 meter in diameter.

(ii) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C or 2D of 40 CFR part 60, appendix A–1, as appropriate.

(iii) (A) Method 18 of 40 CFR part 60, appendix A–6 or Method 25A of 40 CFR part 60, appendix A–7 shall be used to measure concentration; alternatively, any other method or data that has been validated according to the protocol in Method 301 of appendix A of this part may be used.

(B) Where Method 18 of 40 CFR part 60, appendix A–6 is used, the following procedures shall be used to calculate parts per million by volume concentration:

(*1*) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(*2*) The concentration of either total organic compounds (TOC) (minus methane and ethane) or organic HAP shall be calculated according to paragraph (g)(2)(iii)(B)(2)(i) or (g)(2)(iii)(B)(2)(ii) of this section as applicable.

(*i*) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using Equation 1 of this section:

$$C_{TOC} = \frac{\sum_{i=1}^{x}\left(\sum_{j=1}^{n} C_{ji}\right)}{X} \qquad \text{(Eq. 1)}$$

Where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

C_{ji} = Concentration of sample component j of the sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(*ii*) The total organic HAP concentration (CHAP) shall be computed according to Equation 1 of this section except that only the organic HAP species shall be summed. The list of organic HAP is provided in Table 2 to subpart F of this part.

(C) Where Method 25A of 40 CFR part 60, appendix A–7 is used, the following procedures shall be used to calculate parts per million by volume TOC concentration:

(*1*) Method 25A of 40 CFR part 60, appendix A–7, shall be used only if a single organic HAP compound is greater than 50 percent of total organic HAP, by volume, in the vent stream.

(*2*) The vent stream composition may be determined by either process knowledge, test data collected using an appropriate EPA method, or a method or data validated according to the protocol in Method 301 of appendix A of this part. Examples of information that could constitute process knowledge include calculations based on material balances, process stoichiometry, or previous test results provided the results are still relevant to the current vent stream conditions.

(*3*) The organic HAP used as the calibration gas for Method 25A of 40 CFR part 60, appendix A–7 shall be the single organic HAP compound present at greater than 50 percent of the total organic HAP by volume.

(*4*) The span value for Method 25A of 40 CFR part 60, appendix A–7 shall be 50 parts per million by volume.

(*5*) Use of Method 25A of 40 CFR part 60, appendix A–7 is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iv) Engineering assessment including, but not limited to, the following:

(A) Previous test results provided the tests are representative of current operating practices at the process unit.

(B) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(C) Maximum flow rate, TOC emission rate, organic HAP emission rate, or net heating value limit specified or implied within a permit limit applicable to the process vent.

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances based on process stoichiometry to estimate maximum organic HAP concentrations,

(*2*) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities,

(*3*) Estimation of TOC or organic HAP concentrations based on saturation conditions,

(*4*) Estimation of maximum expected net heating value based on the vent stream concentration of each organic compound or, alternatively, as if all TOC in the vent stream were the compound with the highest heating value.

(E) All data, assumptions, and procedures used in the engineering assessment shall be documented.

(3) For miscellaneous process vents the emissions profile must be determined according to paragraph (g)(2)(iv) of this section.

(h) *Process changes.* Except for temporary shutdowns for maintenance activities, if you make a process change such that, as a result of that change, you are subject to a different process vent limit in Table 1 or 2 to this subpart, then you must meet the requirements of § 63.11896.

§ 63.11930 What requirements must I meet for closed vent systems?

(a) *General.* To route emissions from process vents subject to the emission limits in Table 1 or 2 to this subpart to a control device, you must use a closed vent system and meet the requirements of this section and all provisions referenced in this section. However, if you operate and maintain your closed vent system in vacuum service as defined in § 63.12005, you must meet the requirements in paragraph (h) of this section and are not required to meet the requirements in paragraphs (a) through (g) of this section.

(b) *Collection of emissions.* Each closed vent system must be designed and operated to collect the HAP vapors from each continuous process vent, miscellaneous process vent and batch process vent, and to route the collected vapors to a control device.

(c) *Bypass.* For each closed vent system that contains a bypass as defined in § 63.12005 (*e.g.*, diverting a vent stream away from the control device), you must not discharge to the atmosphere through the bypass. Any such release constitutes a violation of this rule. The use of any bypass diverted to the atmosphere during a performance test invalidates the performance test. You must comply with the provisions of either paragraph (c)(1) or (2) of this section for each closed vent system that contains a bypass that could divert a vent stream to the atmosphere.

(1) Bypass flow indicator. Install, maintain, and operate a flow indicator as specified in paragraphs (c)(1)(i) through (iv) of this section.

(i) The flow indicator must be properly installed at the entrance to any bypass.

(ii) The flow indicator must be equipped with an alarm system that will alert an operator immediately, and automatically when flow is detected in the bypass. The alarm must be located such that the alert is detected and recognized easily by an operator.

(iii) If the alarm is triggered, you must immediately initiate procedures to identify the cause of the alarm. If any closed vent system has discharged to the atmosphere through a vent or bypass, you must initiate procedures to stop the bypass discharge.

(iv) For any instances where the flow indicator alarm is triggered, you must submit to the Administrator as part of your compliance report, the information specified in § 63.11985(b)(9) and (10). This report is required even if you elect to follow the procedures specified in § 63.11895 to establish an affirmative defense and submit the reports specified in § 63.11985(b)(11).

(2) Bypass valve configuration. Secure the bypass valve in the non-diverting position with a car-seal or a lock-and-key type configuration.

(i) You must visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position, and the vent stream is not diverted through the bypass. A broken seal or closure mechanism or a diverted valve constitutes a violation from the emission limits in Table 1 or 2 to this subpart. You must maintain the records specified in paragraph (g)(1)(ii) of this section.

(ii) For each seal or closure mechanism, you must comply with either paragraph (c)(2)(ii)(A) or (B) of this section.

(A) For each instance that you change the bypass valve to the diverting position, you must submit to the Administrator as part of your compliance report, the information specified in § 63.11985(b)(9) and (10). This report is required even if you elect to follow the procedures specified in § 63.11895 to establish an affirmative defense and submit the reports specified in § 63.11985(b)(11).

(B) You must install, maintain, and operate a bypass flow indicator as specified in paragraphs (c)(1)(i) and (ii) of this section and you must meet the requirements in paragraph (c)(1)(iii) and (iv) of this section for each instance that the flow indicator alarm is triggered.

(d) *Closed vent system inspection and monitoring requirements.* Except as provided in paragraph (d)(3) of this section, you must inspect each closed vent system as specified in paragraph (d)(1) or (2) of this section.

(1) Hard-piping inspection. If the closed vent system is constructed of hard-piping, you must comply with the requirements specified in paragraphs (d)(1)(i) and (ii) of this section.

(i) Conduct an initial inspection according to the procedures in paragraph (e) of this section.

(ii) Conduct annual inspections for visible, audible, or olfactory indications of leaks.

(2) Ductwork inspection. If the closed vent system is constructed of ductwork, you must conduct initial and annual inspections according to the procedures in paragraph (e) of this section.

(3) Equipment that is unsafe to inspect. You may designate any parts of the closed vent system as unsafe to inspect if you determine that personnel would be exposed to an immediate danger as a consequence of complying with the initial and annual closed vent system inspection requirements of this subpart.

(e) *Closed vent system inspection procedures.* Except as provided in paragraph (e)(4) of this section, you must comply with all provisions of paragraphs (e)(1) through (3) of this section.

(1) General. Inspections must be performed during periods when HAP is being collected by or vented through the closed vent system. A leak is indicated by an instrument reading greater than 500 parts per million by volume above background or by visual inspection.

(2) Inspection procedures. Each closed vent system subject to this paragraph (e)(2) must be inspected according to the procedures specified in paragraphs (e)(2)(i) through (vii) of this section.

(i) Inspections must be conducted in accordance with Method 21 at 40 CFR part 60, appendix A–7, except as otherwise specified in this section.

(ii) Except as provided in paragraph (e)(2)(iii) of this section, the detection instrument must meet the performance criteria of Method 21 at 40 CFR part 60, appendix A–7, except the instrument response factor criteria in section 8.1.1.2 of Method 21 must be for the representative composition of the process fluid and not of each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, water or other inerts that are not organic HAP or volatile organic compound, the representative stream response factor must be determined on an inert-free basis. You may determine the response factor at any concentration for which you will monitor for leaks.

(iii) If no instrument is available at the plant site that will meet the performance criteria of Method 21 at 40 CFR part 60, appendix A–7 specified in paragraph (e)(2)(ii) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid, calculated on an inert-free basis as described in paragraph (e)(2)(ii) of this section.

(iv) The detection instrument must be calibrated before use on each day of its use by the procedures specified in Method 21 at 40 CFR part 60, appendix A–7.

(v) Calibration gases must be as specified in paragraphs (e)(2)(v)(A) through (D) of this section.

(A) Zero air (less than 10 parts per million by volume hydrocarbon in air).

(B) Mixtures of methane in air at a concentration less than 10,000 parts per million by volume. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (e)(2)(ii) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(C) If the detection instrument's design allows for multiple calibration scales, then the lower scale must be calibrated with a calibration gas that is no higher than 2,500 parts per million by volume.

(D) Perform a calibration drift assessment, at a minimum, at the end of each monitoring day. Check the instrument using the same calibration gas(es) that were used to calibrate the instrument before use. Follow the procedures specified in Method 21 at 40 CFR part 60, appendix A–7, section 10.1, except do not adjust the meter readout to correspond to the calibration gas value. Record the instrument reading for each scale used as specified in paragraph (g)(4) of this section. Divide these readings by the initial calibration values for each scale and multiply by 100 to express the calibration drift as a percentage. If any calibration drift assessment shows a negative drift of more than 10 percent from the initial calibration value, then all equipment monitored since the last calibration with instrument readings below the appropriate leak definition and above the leak definition multiplied by the value specified in paragraph (e)(2)(v)(D)(*1*) of this section must be re-monitored. If any calibration drift assessment shows a positive drift of more than 10 percent from the initial calibration value, then, at your discretion, all equipment since the last calibration with instrument readings above the appropriate leak definition and below the leak definition multiplied by the value specified in paragraph (e)(2)(v)(D)(*2*) of this section may be re-monitored.

(*1*) 100 minus the percent of negative drift, divided by 100.

(*2*) 100 plus the percent of positive drift, divided by 100.

(vi) You may elect to adjust or not adjust instrument readings for background. If you elect not to adjust readings for background, all such instrument readings must be compared directly to 500 parts per million by volume to determine whether there is a leak. If you elect to adjust instrument readings for background, you must measure background concentration using the procedures in this section. You must subtract the background reading from the maximum concentration indicated by the instrument.

(vii) If you elect to adjust for background, the arithmetic difference between the maximum concentration indicated by the instrument and the background level must be compared with 500 parts per million by volume for determining whether there is a leak.

(3) Instrument probe. The instrument probe must be traversed around all potential leak interfaces as described in Method 21 at 40 CFR part 60, appendix A–7.

(4) Unsafe-to-inspect written plan requirements. For equipment designated as unsafe to inspect according to the provisions of paragraph (d)(3) of this section, you must maintain and follow a written plan that requires inspecting the equipment as frequently as practical during safe-to-inspect times, but not more frequently than the annual inspection schedule otherwise applicable. You must still repair unsafe-to-inspect equipment according to the procedures in paragraph (f) of this section if a leak is detected.

(f) *Closed vent system leak repair provisions.* The provisions of this paragraph (f) apply to closed vent systems collecting HAP from an affected source.

(1) Leak repair general for hard-piping. If there are visible, audible, or olfactory indications of leaks at the time

of the annual visual inspections required by paragraph (d)(1)(ii) of this section, you must follow the procedure specified in either paragraph (f)(1)(i) or (ii) of this section.

(i) You must eliminate the leak.

(ii) You must monitor the equipment according to the procedures in paragraph (e) of this section and comply with the leak repair provisions in paragraph (f)(2) of this section.

(2) Leak repair schedule. Leaks must be repaired as soon as practical, except as provided in paragraph (f)(3) of this section.

(i) A first attempt at repair must be made no later than 5 days after the leak is detected.

(ii) Except as provided in paragraph (f)(3) of this section, repairs must be completed no later than 15 days after the leak is detected or at the beginning of the next introduction of vapors to the system, whichever is later.

(3) Delay of repair. Delay of repair of a closed vent system for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible or unsafe without a closed vent system shutdown or if you determine that emissions resulting from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of such equipment must be completed as soon as practical, but not later than the end of the next closed vent system shutdown.

(g) *Closed vent system records.* For closed vent systems, you must record the information specified in paragraphs (g)(1) through (5) of this section, as applicable.

(1) Bypass records. For each closed vent system that contains a bypass that could divert a vent stream away from the control device and to the atmosphere, or cause air intrusion into the control device, you must keep a record of the information specified in either paragraph (g)(1)(i) or (ii) of this section, as applicable.

(i) You must maintain records of any alarms triggered because flow was detected in the bypass, including the date and time the alarm was triggered, the duration of the flow in the bypass, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(ii) Where a seal mechanism is used to comply with paragraph (c)(2) of this section, hourly records of flow are not required. In such cases, you must record that the monthly visual inspection of the seals or closure mechanisms has been done, and must record the occurrence of all periods when the seal mechanism is broken, the bypass valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has been broken.

(2) Inspection records. For each instrumental or visual inspection conducted in accordance with paragraph (d)(1) or (2) of this section for closed vent systems collecting HAP from an affected source during which no leaks are detected, you must record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(3) Leak records. When a leak is detected from a closed vent system collecting HAP from an affected source, the information specified in paragraphs (g)(3)(i) through (vi) of this section must be recorded and kept for 5 years.

(i) The instrument and the equipment identification number and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of the first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) The maximum instrument reading measured by the procedures in paragraph (e) of this section after the leak is successfully repaired.

(v) Repair delayed and the reason for the delay if a leak is not repaired within 15 days after discovery of the leak. You may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(vi) Copies of the compliance reports as specified in § 63.11985(b)(9), if records are not maintained on a computerized database capable of generating summary reports from the records.

(4) Instrument calibration records. You must maintain records of the information specified in paragraphs (g)(4)(i) through (vi) of this section for monitoring instrument calibrations conducted according to sections 8.1.2 and 10 of Method 21 at 40 CFR part 60, appendix A–7, and paragraph (e) of this section.

(i) Date of calibration and initials of operator performing the calibration.

(ii) Calibration gas cylinder identification, certification date, and certified concentration.

(iii) Instrument scale(s) used.

(iv) A description of any corrective action taken if the meter readout could not be adjusted to correspond to the calibration gas value in accordance with section 10.1 of Method 21 at 40 CFR part 60, appendix A–7.

(v) Results of each calibration drift assessment required by paragraph (e)(2)(v)(D) of this section (*i.e.,* instrument reading for calibration at end of the monitoring day and the calculated percent difference from the initial calibration value).

(vi) If you make your own calibration gas, a description of the procedure used.

(5) Unsafe-to-inspect records. If you designate equipment as unsafe-to-inspect as specified in paragraph (d)(3) of this section, you must keep the records specified in paragraph (g)(5)(i) and (ii) of this section.

(i) You must maintain the identity of unsafe-to-inspect equipment as specified in paragraph (d)(3) of this section.

(ii) You must keep a written plan for inspecting unsafe-to-inspect equipment as required by paragraph (e)(4) of this section and record all activities performed according to the written plan.

(h) Closed vent systems in vacuum service. If you operate and maintain a closed vent system in vacuum service as defined in § 63.12005, you must comply with the requirements in paragraphs (h)(1) through (3) of this section, and you are not required to comply with any other provisions of this section. Any incidence where a closed vent system designed to be in vacuum service is operating and not in vacuum service constitutes a violation of this rule, unless the closed vent system is meeting the requirements in paragraphs (a) through (g) of this section for closed vent systems that are not in vacuum service. Any such incidence during a performance test invalidates the performance test.

(1) In vacuum service alarm. You must install, maintain, and operate a pressure gauge and alarm system that will alert an operator immediately and automatically when the pressure is such that the closed vent system no longer meets the definition of in vacuum service as defined in § 63.12005. The alarm must be located such that the alert is detected and recognized easily by an operator.

(2) In vacuum service alarm procedures. If the alarm is triggered for a closed vent system operating in vacuum service as specified in paragraph (h)(1) of this section, you must immediately initiate procedures to identify the cause of the alarm. If the closed vent system is not in vacuum service, you must initiate procedures to get the closed vent system back in vacuum service as defined in § 63.12005, or you must immediately comply with the requirements in paragraphs (a) through (g) of this section

for closed vent systems that are not in vacuum service.

(3) In vacuum service alarm records and reports. For any incidences where a closed vent system designed to be in vacuum service is not in vacuum service, you must submit to the Administrator as part of your compliance report, the information specified in § 63.11985(b)(10). This report is required even if you elect to follow the procedures specified in § 63.11895 to establish an affirmative defense and submit the reports specified in § 63.11985(b)(11).

§ 63.11935 What CEMS and CPMS requirements must I meet to demonstrate initial and continuous compliance with the emission standards for process vents?

(a) *General requirements for CEMS and CPMS.* You must meet the requirements in paragraph (b) of this section for each CEMS specified in § 63.11925(c) used to demonstrate compliance with the emission limits for process vents in Table 1 or 2 to this subpart. You must meet the CPMS requirements in paragraph (c) of this section and establish your operating limits in paragraph (d) of this section for each operating parameter specified in Table 5 to this subpart for each process vent control device specified in § 63.11925(b) that is used to comply with the emission limits for process vents in Table 1 or 2 to this subpart, except that flow indicators specified in § 63.11940(a) are not subject to the requirements of this section.

(b) *CEMS.* You must install, operate, and maintain each CEMS according to paragraphs (b)(1) through (7) of this section and continuously monitor emissions.

(1) You must prepare your quality control program and site-specific performance evaluation test plan, as specified in § 63.8(d) and (e). You must submit your performance evaluation test plan to the Administrator for approval, as specified in § 63.8(e)(3).

(2) The monitoring equipment must be capable of providing a continuous record, recording data at least once every 15 minutes.

(3) You must conduct initial and periodic site-specific performance evaluations and any required tests of each CEMS according to your quality control program and site-specific performance evaluation test plan prepared as specified in § 63.8(d) and (e).

(4) If supplemental gases are added to the control device, you must correct the measured concentrations in accordance with § 63.11945(d)(3).

(5) You must operate and maintain the CEMS in continuous operation according to the quality control program and performance evaluation test plan. CEMS must record data at least once every 15 minutes.

(6) CEMS must meet the minimum accuracy and calibration frequency requirements specified in the performance specifications specified in paragraphs (b)(6)(i) and (ii) of this section, as applicable.

(i) A hydrogen chloride or dioxin/furan CEMS must meet the requirements of the promulgated performance specification for the CEMS.

(ii) A total hydrocarbon CEMS must meet the requirements of 40 CFR Part 60, Appendix B, performance specification 8A.

(7) Before commencing or ceasing use of a CEMS system, you must notify the Administrator as specified in paragraphs (b)(7)(i) and (ii) of this section.

(i) You must notify the Administrator 1 month before starting use of the continuous emissions monitoring system.

(ii) You must notify the Administrator 1 month before stopping use of the continuous emissions monitoring system, in which case you must also conduct a performance test within 60 days of ceasing operation of the system.

(c) *CPMS.* You must install, maintain, and operate each CPMS as specified in paragraphs (c)(1) through (6) of this section and continuously monitor operating parameters.

(1) As part of your quality control program and site-specific performance evaluation test plan prepared as specified in § 63.8(d) and (e), you must prepare a site-specific monitoring plan that addresses the monitoring system design, data collection, and the quality assurance and quality control elements specified in paragraphs (c)(1)(i) through (v) of this section and § 63.8(d). You are not required to submit the plan for approval unless requested by the Administrator. You may request approval of monitoring system quality assurance and quality control procedure alternatives to those specified in paragraphs (c)(1)(i) through (v) of this section in your site-specific monitoring plan.

(i) The performance criteria and design specifications for the monitoring system equipment, including the sample interface, detector signal analyzer, and data acquisition and calculations.

(ii) Sampling interface (*e.g.,* thermocouple) location such that the monitoring system will provide representative measurements.

(iii) Equipment performance checks, calibrations, or other audit procedures.

(iv) Ongoing operation and maintenance procedures in accordance with provisions in § 63.8(c)(1) and (3).

(v) Ongoing reporting and recordkeeping procedures in accordance with provisions in § 63.10(c), (e)(1) and (e)(2)(i).

(2) The monitoring equipment must be capable of providing a continuous record, recording data at least once every 15 minutes.

(3) You must install, operate, and maintain each CPMS according to the procedures and requirements in your site-specific monitoring plan.

(4) You must conduct an initial and periodic site-specific performance evaluation tests of each CPMS according to your site-specific monitoring plan.

(5) All CPMS must meet the specific parameter (*e.g.,* minimum accuracy and calibration frequency) requirements specified in § 63.11940 and Table 7 to this subpart.

(6) Monitoring equipment for temperature, pressure, volumetric flow rate, mass flow rate and conductivity must be capable of measuring the appropriate parameter over a range that extends at least 20 percent beyond the normal expected operating range of values for that parameter. The data recording system associated with affected CPMS must have a resolution that is equal to or better than one-half of the required system accuracy.

(d) *Establish operating limit.* For each operating parameter that must be monitored in § 63.11925(c) for process vent control devices, you must establish an operating limit as specified in paragraphs (d)(1) through (4) of this section. You must establish each operating limit as an operating parameter range, minimum operating parameter level, or maximum operating parameter level as specified in Table 7 to this subpart. Where this subpart does not specify which format to use for your operating limit (*e.g.,* operating range or minimum operating level), you must determine which format is best to establish proper operation of the control device such that you are meeting the emission limits specified in Table 1 or 2 to this subpart.

(1) For process vent control devices, the operating limit established for each monitored parameter specified in § 63.11940 must be based on the operating parameter values recorded during any performance test conducted to demonstrate compliance as required by § 63.11925(d)(4) and (e)(4) and may be supplemented by engineering assessments and/or manufacturer's recommendations. You are not required

to conduct performance tests over the entire range of allowed operating parameter values. The established operating limit must represent the conditions for which the control device is meeting the emission limits specified in Table 1 or 2 to this subpart.

(2) You must include as part of the notification of compliance status or the operating permit application or amendment, the information in paragraphs (d)(2)(i) through (iv) of this section, as applicable, for each process vent control device requiring operating limits.

(i) Descriptions of monitoring devices, monitoring frequencies and operating scenarios.

(ii) The established operating limit of the monitored parameter(s).

(iii) The rationale for the established operating limit, including any data and calculations used to develop the operating limit and a description of why the operating limit indicates proper operation of the control device.

(iv) The rationale used to determine which format to use for your operating limit (*e.g.,* operating range, minimum operating level or maximum operating level), where this subpart does not specify which format to use.

(3) For batch processes, you may establish operating limits for individual batch emission episodes, including each distinct episode of process vent emissions or each individual type of batch process that generates wastewater, if applicable. You must provide rationale in a batch precompliance report as specified in § 63.11985(c)(2) instead of the notification of compliance status for the established operating limit. You must include any data and calculations used to develop the operating limits and a description of why each operating limit indicates proper operation of the control device during the specific batch emission episode.

(4) If you elect to establish separate operating limits for different batch emission episodes within a batch process as specified in paragraph (d)(3) of this section, you must maintain daily records indicating each point at which you change from one operating limit to another, even if the monitoring duration for an operating limit is less than 15 minutes. You must maintain a daily record according to § 63.11990(e)(4)(i).

(e) *Reduction of CPMS and CEMS data.* You must reduce CEMS and CPMS data to 1-hour averages according to § 63.8(g) to compute the average values for demonstrating compliance specified in §§ 63.11925(e)(3)(ii), 63.11925(e)(4)(ii)(B), and 63.11960(c)(2) for CEMS and CPMS, as applicable.

§ 63.11940 What continuous monitoring requirements must I meet for control devices required to install CPMS to meet the emission limits for process vents?

As required in § 63.11925(c), you must install and operate the applicable CPMS specified in paragraphs (a) through (g) of this section for each control device you use to comply with the emission limits for process vents in Table 1 or 2 to this subpart. You must monitor, record, and calculate CPMS data averages as specified in Table 7 to this subpart. Paragraph (h) of this section provides an option to propose alternative monitoring parameters or procedures.

(a) *Flow indicator.* If flow to a control device could be intermittent, you must install, calibrate, and operate a flow indicator at the inlet or outlet of the control device to identify periods of no flow.

(b) *Thermal oxidizer monitoring.* If you are using a thermal oxidizer to meet an emission limit in Table 1 or 2 to this subpart and you are required to use CPMS as specified in § 63.11925(c), you must equip the thermal oxidizer with the monitoring equipment specified in paragraphs (b)(1) through (3) of this section, as applicable.

(1) If a thermal oxidizer other than a catalytic thermal oxidizer is used, you must install a temperature monitoring device in the fire box or in the ductwork immediately downstream of the fire box in a position before any substantial heat exchange occurs.

(2) Except as provided in paragraph (b)(3) of this section, where a catalytic thermal oxidizer is used, you must install temperature monitoring devices in the gas stream immediately before and after the catalyst bed. You must monitor the temperature differential across the catalyst bed.

(3) Instead of complying with paragraph (b)(2) of this section, and if the temperature differential between the inlet and outlet of the catalytic thermal oxidizer during normal operating conditions is less than 10 degrees Celsius (18 degrees Fahrenheit), you may elect to monitor the inlet temperature and conduct catalyst checks as specified in paragraphs (b)(3)(i) and (ii) of this section.

(i) You must conduct annual sampling and analysis of the catalyst activity (*i.e.,* conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures. If problems are found during the catalyst activity test, you must replace the catalyst bed or take other corrective action consistent with the manufacturer's recommendations within 15 days or by the next time any process vent stream is collected by the control device, whichever is sooner.

(ii) You must conduct annual internal inspections of the catalyst bed to check for fouling, plugging, or mechanical breakdown. You must also inspect the bed for channeling, abrasion, and settling. If problems are found during the annual internal inspection of the catalyst, you must replace the catalyst bed or take other corrective action consistent with the manufacturer's recommendations within 15 days or by the next time any process vent stream is collected by the control device, whichever is later. If the catalyst bed is replaced and is not of like or better kind and quality as the old catalyst then you must conduct a new performance test according to § 63.11945 to determine destruction efficiency. If a catalyst bed is replaced and the replacement catalyst is of like or better kind and quality as the old catalyst, then a new performance test to determine destruction efficiency is not required.

(c) *Absorber and acid gas scrubber monitoring.* If you are using an absorber or acid gas scrubber to meet an emission limit in Table 1 or 2 to this subpart and you are required to use CPMS as specified in § 63.11925(c), you must install the monitoring equipment specified in paragraphs (c)(1) through (3) of this section.

(1) Install and operate the monitoring equipment as specified in either paragraph (c)(1)(i) or (ii) of this section.

(i) A flow meter to monitor the absorber or acid gas scrubber influent liquid flow.

(ii) A flow meter to monitor the absorber or acid gas scrubber influent liquid flow and the gas stream flow using one of the procedures specified in paragraphs (c)(1)(ii)(A), (B), or (C) of this section. You must monitor the liquid-to-gas ratio determined by dividing the flow rate of the absorber or acid gas scrubber influent by the gas flow rate. The units of measure must be consistent with those used to calculate this ratio during the performance test.

(A) Determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) Measure the gas stream flow at the absorber or acid gas scrubber inlet.

(C) If you have previously determined compliance for a scrubber that requires a determination of the liquid-to-gas ratio, you may use the results of that test provided the test conditions are representative of current operation.

(2) Install and operate the monitoring equipment as specified in either paragraph (c)(2)(i), (ii), or (iii) of this section.

(i) Install and operate pressure gauges at the inlet and outlet of the absorber or acid gas scrubber to monitor the pressure drop through the absorber or acid gas scrubber.

(ii) If the difference in the inlet gas stream temperature and the inlet liquid stream temperature is greater than 38 degrees Celsius, you may install and operate a temperature monitoring device at the scrubber gas stream exit.

(iii) If the difference between the specific gravity of the scrubber effluent scrubbing fluid and specific gravity of the scrubber inlet scrubbing fluid is greater than or equal to 0.02 specific gravity units, you may install and operate a specific gravity monitoring device on the inlet and outlet of the scrubber.

(3) If the scrubbing liquid is a reactant (e.g., lime, ammonia hydroxide), you must install and operate one of the devices listed in either paragraph (c)(3)(i), (ii) or (iii) of this section.

(i) A pH monitoring device to monitor the pH of the scrubber liquid effluent.

(ii) A caustic strength monitoring device to monitor the caustic strength of the scrubber liquid effluent.

(iii) A conductivity monitoring device to monitor the conductivity of the scrubber liquid effluent.

(d) *Regenerative adsorber monitoring.* If you are using a regenerative adsorber to meet an emission limit in Table 1 or 2 to this subpart and you are required to use CPMS as specified in § 63.11925(c), you must install and operate the applicable monitoring equipment listed in paragraphs (d)(1) through (5) of this section, and comply with the requirements in paragraphs (d)(6) and (7) of this section. If the adsorption system water is wastewater as defined in § 63.12005, then it is subject to the requirements of § 63.11965.

(1) For non-vacuum regeneration systems, an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent, capable of recording the total regeneration stream mass for each regeneration cycle. For non-vacuum regeneration systems, an integrating regeneration stream flow monitoring device capable of continuously recording the total regeneration stream mass flow for each regeneration cycle.

(2) For non-vacuum regeneration systems, an adsorber bed temperature monitoring device, capable of continuously recording the adsorber bed temperature after each regeneration and within 15 minutes of completing any temperature regulation (cooling or warming to bring bed temperature closer to vent gas temperature) portion of the regeneration cycle.

(3) For non-vacuum and non-steam regeneration systems, an adsorber bed temperature monitoring device capable of continuously recording the bed temperature during regeneration, except during any temperature regulating (cooling or warming to bring bed temperature closer to vent gas temperature) portion of the regeneration cycle.

(4) For a vacuum regeneration system, a pressure transmitter installed in the vacuum pump suction line capable of continuously recording the vacuum level for each minute during regeneration. You must establish a minimum target and a length of time at which the vacuum must be below the minimum target during regeneration.

(5) A device capable of monitoring the regeneration frequency (*i.e.,* operating time since last regeneration) and duration.

(6) You must perform a verification of the adsorber during each day of operation. The verification must be through visual observation or through an automated alarm or shutdown system that monitors and records system operational parameters. The verification must verify that the adsorber is operating with proper valve sequencing and cycle time.

(7) You must conduct weekly measurements of the carbon bed outlet volatile organic compounds concentration over the last 5 minutes of an adsorption cycle for each carbon bed. For regeneration cycles longer than 1 week, you must perform the measurement over the last 5 minutes of each adsorption cycle for each carbon bed. The outlet concentration of volatile organic compounds must be measured using a portable analyzer, in accordance with Method 21 at 40 CFR part 60, appendix A–7, for open-ended lines. Alternatively, outlet concentration of HAP(s) may be measured using chromatographic analysis using Method 18 at 40 CFR part 60, appendix A–6.

(e) *Non-regenerative adsorber monitoring.* If you are using a non-regenerative adsorber, or canister type system that is sent off site for regeneration or disposal, to meet an emission limit in Table 1 or 2 to this subpart and you are required to use CPMS as specified in § 63.11925(c), you must install a system of dual adsorber units in series and conduct the monitoring and bed replacement as specified in paragraphs (e)(1) through (4) of this section.

(1) Establish the average adsorber bed life by conducting daily monitoring of the outlet volatile organic compound or HAP concentration, as specified in this paragraph (e)(1), of the first adsorber bed in series until breakthrough occurs for the first three adsorber bed change-outs. The outlet concentration of volatile organic compounds must be measured using a portable analyzer, in accordance with Method 21 at 40 CFR part 60, appendix A–7, for open-ended lines. Alternatively, outlet concentration of HAP may be measured using chromatographic analysis using Method 18 at 40 CFR part 60, appendix A–6. Breakthrough of the bed is defined as the time when the level of HAP detected is at the highest concentration allowed to be discharged from the adsorber system.

(2) Once the average life of the bed is determined, conduct ongoing monitoring as specified in paragraphs (e)(2)(i) through (iii) of this section.

(i) Except as provided in paragraphs (e)(2)(ii) and (iii) of this section, conduct daily monitoring of the adsorber bed outlet volatile organic compound or HAP concentration, as specified in paragraph (e)(1) of this section.

(ii) You may conduct monthly monitoring if the adsorbent has more than 2 months of life remaining, as determined by the average primary adsorber bed life, established in paragraph (e)(1) of this section, and the date the adsorbent was last replaced.

(iii) You may conduct weekly monitoring if the adsorbent has more than 2 weeks of life remaining, as determined by the average primary adsorber bed life, established in paragraph (e)(1) of this section, and the date the adsorbent was last replaced.

(3) The first adsorber in series must be replaced immediately when breakthrough is detected between the first and second adsorber. The original second adsorber (or a fresh canister) will become the new first adsorber and a fresh adsorber will become the second adsorber. For purposes of this paragraph (e)(3), ''immediately'' means within 8 hours of the detection of a breakthrough for adsorbers of 55 gallons or less, and within 24 hours of the detection of a breakthrough for adsorbers greater than 55 gallons.

(4) In lieu of replacing the first adsorber immediately, you may elect to monitor the outlet of the second canister beginning on the day the breakthrough between the first and second canister is identified and each day thereafter. This daily monitoring must continue until the first canister is replaced. If the constituent being monitored is detected at the outlet of the second canister during this period of daily monitoring, both canisters must be replaced within 8 hours of the time of detection of

volatile organic compounds or HAP at 90 percent of the allowed level (90 percent of breakthrough definition).

(f) *Condenser monitoring.* If you are using a condenser to meet an emission limit in Table 1 or 2 to this subpart and you are required to use CPMS as specified in § 63.11925(c), you must install and operate a condenser exit gas temperature monitoring device.

(g) *Other control devices.* If you use a control device other than those listed in this subpart to comply with an emission limit in Table 1 or 2 to this subpart and you are required to use CPMS as specified in § 63.11925(c), you must comply with the requirements as specified in paragraphs (g)(1) and (2) of this section.

(1) Submit a description of the planned monitoring, recordkeeping, and reporting procedures. The Administrator will approve, deny or modify the proposed monitoring, reporting and recordkeeping requirements as part of the review of the plan or through the review of the permit application or by other appropriate means.

(2) You must establish operating limits for monitored parameters that are approved by the Administrator. To establish the operating limit, the information required in § 63.11935(d) must be submitted in the notification of compliance status report specified in § 63.11985(a).

(h) *Alternatives to monitoring requirements.* (1) You may request approval to use alternatives to the continuous operating parameter monitoring listed in this section, as specified in §§ 63.11985(c)(4) and 63.8.

(2) You may request approval to monitor a different parameter than those established in § 63.11935(d) or to set unique monitoring parameters, as specified in §§ 63.11985(c)(5) and 63.8. Until permission to use an alternative monitoring parameter has been granted by the Administrator, you remain subject to the requirements of this subpart.

§ 63.11945 What performance testing requirements must I meet for process vents?

(a) *General.* For each control device used to meet the emission limits for process vents in Table 1 or 2 to this subpart, you must conduct the initial and periodic performance tests required in § 63.11925(d) and (e) and as specified in § 63.11896 using the applicable test methods and procedures specified in Table 8 to this subpart and paragraphs (b) through (d) of this section.

(b) *Process operating conditions.* You must conduct performance tests under the conditions specified in paragraphs (b)(1) through (3) of this section, as applicable. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests. In all cases, a site-specific plan must be submitted to the Administrator for approval prior to testing in accordance with § 63.7(c). The test plan must include the emission profiles described in § 63.11925(g).

(1) *Continuous process vents.* For continuous process vents, you must conduct all performance tests at maximum representative operating conditions for the process. For continuous compliance, you must conduct subsequent performance tests within the range of operating limit(s) that were established for the control device during the initial or subsequent performance tests specified in § 63.11925(d) and (e). If an operating limit is a range, then you must conduct subsequent performance tests within the range of maximum or minimum operating limits for the control device, which result in highest emissions (*i.e.,* lowest emission reduction).

(2) *Batch process operations.* Testing must be conducted at absolute worst-case conditions or hypothetical worst-case conditions as specified in paragraph (c) of this section.

(3) *Combination of both continuous and batch unit operations.* You must conduct performance tests when the batch process vents are operating at absolute worst-case conditions or hypothetical worst-case conditions, as specified in paragraphs (c)(1) and (2) of this section, and at maximum representative operating conditions for the process. For continuous compliance, you must operate the control device as close as possible to your operating limit(s) for the control device established during the initial or subsequent performance tests specified in § 63.11925 (d) and (e). If an operating limit is a range, then you must operate the control device as close as possible to the maximum or minimum operating limit for the control device, whichever results in higher emissions (*i.e.,* lower emission reduction), unless the Administrator specifies or approves alternate operating conditions.

(c) *Batch worst-case conditions.* The absolute worst-case conditions for batch process operations must be characterized by the criteria presented in paragraph (c)(1) of this section. The hypothetical worst-case conditions for batch process operations must be characterized by the criteria presented in paragraph (c)(2) of this section.

(1) *Absolute worst-case conditions.* For batch process operations, absolute worst-case conditions are defined by the criteria presented in paragraph (c)(1)(i) of this section if the maximum load is the most challenging condition for the control device. Otherwise, absolute worst-case conditions are defined by the conditions in paragraph (c)(1)(ii) of this section. You must consider all relevant factors, including load and compound-specific characteristics in defining absolute worst-case conditions.

(i) A 1-hour period of time in which the inlet to the control device contains the highest HAP mass loading rate, in pounds per hour, capable of being vented to the control device. An emission profile as described in § 63.11925(g) must be used to identify the 1-hour period of maximum HAP loading.

(ii) The period of time when the HAP loading or stream composition (including non-HAP) is most challenging for the control device. These conditions include, but are not limited to the following:

(A) Periods when the stream contains the highest combined organic load, in pounds per hour, described by the emission profiles in § 63.11925(g).

(B) Periods when the streams contain HAP constituents that approach limits of solubility for scrubbing media.

(C) Periods when the streams contain HAP constituents that approach limits of adsorptivity for adsorption systems.

(2) *Hypothetical worst-case conditions.* For batch process operations, hypothetical worst-case conditions are simulated test conditions that, at a minimum, contain the highest hourly HAP load of emissions that would be predicted to be vented to the control device based on the emissions profiles described in paragraphs (c)(3)(ii) or (iii) of this section.

(3) *Emission profile.* For batch process operations, you must develop an emission profile for the vent to the control device that describes the characteristics of the vent stream at the inlet to the control device under worst-case conditions. The emission profile must be developed based on any one of the procedures described in paragraphs (c)(3)(i) through (iii) of this section.

(i) *Emission profile by process.* The emission profile must consider all batch emission episodes that could contribute to the vent stack for a period of time that is sufficient to include all processes venting to the stack and must consider production scheduling. The profile must describe the HAP load to the device that equals the highest sum of emissions from the episodes that can vent to the control device in any given hour.

Emissions per episode must be calculated using the procedures specified in § 63.11950. Emissions per episode must be divided by the duration of the episode only if the duration of the episode is longer than 1 hour.

(ii) *Emission profile by equipment.* The emission profile must consist of emissions that meet or exceed the highest emissions, in pounds per hour that would be expected under actual processing conditions. The profile must describe equipment configurations used to generate the emission events, volatility of materials processed in the equipment, and the rationale used to identify and characterize the emission events. The emissions may be based on using a compound more volatile than compounds actually used in the process(es), and the emissions may be generated from all equipment in the process(es) or only selected equipment.

(iii) *Emission profile by capture and control device limitation.* The emission profile must consider the capture and control system limitations and the highest emissions, in pounds per hour that can be routed to the control device, based on maximum flow rate and concentrations possible because of limitations on conveyance and control equipment (e.g., fans and lower explosive level alarms).

(d) *Concentration correction calculation.* If a combustion device is the control device and supplemental combustion air is used to combust the emissions, the concentration of total hydrocarbons, total organic HAP, vinyl chloride, and hydrogen chloride must be corrected as specified in paragraph (d)(1) or (2) of this section. If a control device other than a combustion device is used to comply with an outlet concentration emission limit for batch process vents, you must correct the actual concentration for supplemental gases as specified in paragraph (d)(3) of this section.

(1) Determine the concentration of total hydrocarbons, total organic HAP, vinyl chloride, or hydrogen chloride corrected to 3-percent oxygen (Cc) using Equation 1 of this section.

$$C_c = C_m \left(\frac{17.9}{20.9 - \%O_{2d}} \right) \qquad \text{(Eq. 1)}$$

Where:

C_c = Concentration of total hydrocarbons, total organic HAP, vinyl chloride, or hydrogen chloride corrected to 3-percent oxygen, dry basis, parts per million by volume.

C_m = Concentration of total hydrocarbons, total organic HAP, vinyl chloride, or hydrogen chloride, dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percentage by volume.

(2) To determine the oxygen concentration, you must use the emission rate correction factor (or excess air), integrated sampling and analysis procedures of Method 3, 3A, or 3B at 40 CFR part 60, appendix A–2, or ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 63.14).

(3) Correct the measured concentration for supplemental gases using Equation 2 of this section. Process knowledge and representative operating data may be used to determine the fraction of the total flow due to supplemental gas.

$$C_a = C_m \left(\frac{Q_s + Q_a}{Q_a} \right) \qquad \text{(Eq. 2)}$$

Where:

C_a = Corrected outlet concentration of HAP, dry basis, parts per million by volume (ppmv).

C_m = Actual concentration of HAP measured at control device outlet, dry basis, ppmv.

Q_a = Total volumetric flow rate of all gas streams vented to the control device, except supplemental gases.

Q_s = total volumetric flow rate of supplemental gases.

§ 63.11950 What emissions calculations must I use for an emission profile?

When developing your emission profiles for batch process vents as required in § 63.11925(g), except as specified in paragraph (i) of this section, you must calculate emissions from episodes caused by vapor displacement, purging a partially filled vessel, heating, depressurization, vacuum operations, gas evolution, air drying, or empty vessel purging, using the applicable procedures in paragraphs (a) through (h) of this section.

(a) *Vapor displacement.* You must calculate emissions from vapor displacement due to transfer of material using Equation 1 of this section.

$$E = \left(\frac{V}{RT} \right) \sum_{i=1}^{n} P_i \left(MW_i \right) \qquad \text{(Eq. 1)}$$

Where:

E = Mass of HAP emitted.

V = Volume of gas displaced from the vessel.

R = Ideal gas law constant.

T = Temperature of the vessel vapor space; absolute.

P_i = Partial pressure of the individual HAP.

MW_i = Molecular weight of the individual HAP.

n = Number of HAP compounds in the emission stream.

i = Identifier for a HAP compound.

(b) *Gas sweep of a partially filled vessel.* You must calculate emissions from purging a partially filled vessel using Equation 2 of this section. The pressure of the vessel vapor space may be set equal to 760 millimeters of

mercury (mmHg). You must multiply the HAP partial pressure in Equation 2 of this section by a HAP-specific saturation factor determined in accordance with Equations 3 through 5 of this section. Solve Equation 3 of this section iteratively beginning with saturation factors (in the right-hand side of the equation) of 1.0 for each condensable compound. Stop iterating when the calculated saturation factors for all compounds are the same to two significant figures for subsequent iterations. Note that for multi-component emission streams, saturation factors must be calculated for all condensable compounds, not just the HAP.

$$E = \sum_{i=1}^{n} P_i MW_i \left(\frac{Vt}{RT}\right)\left(\frac{P_T}{P_T - \sum_{j=1}^{m}(P_j)}\right) \qquad \text{(Eq. 2)}$$

Where:

E = Mass of HAP emitted.
V = Purge flow rate of the noncondensable gas at the temperature and pressure of the vessel vapor space.
R = Ideal gas law constant.
T = Temperature of the vessel vapor space; absolute.
P_i = Partial pressure of the individual HAP at saturated conditions.
P_j = Partial pressure of individual condensable compounds (including HAP) at saturated conditions.
P_T = Pressure of the vessel vapor space.
MW_i = Molecular weight of the individual HAP.
t = Time of purge.
n = Number of HAP compounds in the emission stream.
i = Identifier for a HAP compound.
j = Identifier for a condensable compound.
m = Number of condensable compounds (including HAP) in the emission stream.

$$S_i = \frac{K_i A}{K_i A + V + \sum_{i=1}^{n} S_i V_i^{sat}} \qquad \text{(Eq. 3)}$$

$$V_i^{sat} = \frac{VP_i}{\left(P_T - \sum_{i=1}^{n} P_i\right)} \qquad \text{(Eq. 4)}$$

$$K_i = K_o \left(\frac{M_o}{M_i}\right)^{1/3} \qquad \text{(Eq. 5)}$$

Where:

S_i = Saturation factor for individual condensable compounds.
P_i = Partial pressure of individual condensable compounds at saturated conditions.
PT = Pressure of the vessel vapor space.
A = Surface area of liquid.
V = Purge flow rate of the noncondensable gas.
V_i^{sat} = Volumetric flow rate of individual condensable compounds at saturated vapor pressure.
K_i = Mass transfer coefficient of individual condensable compounds in the emission stream.
K_o = Mass transfer coefficient of reference compound (*e.g.,* 0.83 cm/s for water).
M_o = Molecular weight of reference compound (*e.g.,* 18.02 for water).
M_i = Molecular weight of individual condensable compounds in the emission stream.
n = Number of condensable compounds in the emission stream.

(c) *Heating.* You must calculate emissions caused by the heating of a vessel to a temperature lower than the boiling point using the procedures in paragraph (c)(1) of this section. If the contents of a vessel are heated to the

boiling point, you must calculate emissions using the procedures in paragraph (c)(2) of this section.

(1) If the final temperature to which the vessel contents are heated is lower than the boiling point of the HAP in the vessel, you must calculate the mass of HAP emitted per episode using Equation 6 of this section. The average gas space molar volume during the heating process is calculated using Equation 7 of this section. The difference in the number of moles of condensable in the vessel headspace between the initial and final temperatures is calculated using Equation 8 of this section.

$$E = MW_{HAP}\left[N_{avg}\ln\left[\frac{P_T - \sum_{i=1}^{n}\left(P_{i,1}\right)}{P_T - \sum_{i=1}^{n}\left(P_{i,2}\right)}\right] - \left(n_{i,2} - n_{i,1}\right)\right] \quad \text{(Eq. 6)}$$

Where:

E = Mass of HAP vapor displaced from the vessel being heated.

N_{avg} = Average gas space molar volume during the heating process.

P_T = Total pressure in the vessel.

$P_{i,1}$ = Partial pressure of the individual HAP compounds at initial temperature (T_1).

$P_{i,2}$ = Partial pressure of the individual HAP compounds at final temperature (T_2).

MW_{HAP} = Average molecular weight of the HAP compounds calculated using Equation 13 of this section.

$n_{i,1}$ = Number of moles of condensable in the vessel headspace at initial temperature (T_1).

$n_{i,2}$ = Number of moles of condensable in the vessel headspace at final temperature (T_2).

n = Number of HAP compounds in the emission stream.

ln = Natural logarithm.

$$N_{avg} = \frac{VP_T}{2R}\left(\frac{1}{T_1} + \frac{1}{T_2}\right) \quad \text{(Eq. 7)}$$

Where:

N_{avg} = Average gas space molar volume during the heating process.

V = Volume of free space in vessel.

P_T = Total pressure in the vessel.

R = Ideal gas law constant.

T_1 = Initial temperature of the vessel.

T_2 = Final temperature of the vessel.

$$\left(n_{i,2} - n_{i,1}\right) = \frac{V}{RT_2}\sum_{i=1}^{n}P_{i,2} - \frac{V}{RT_1}\sum_{i=1}^{n}P_{i,1} \quad \text{(Eq. 8)}$$

Where:

V = Volume of free space in vessel.

R = Ideal gas law constant.

T_1 = Initial temperature in the vessel.

T_2 = Final temperature in the vessel.

$P_{i,1}$ = Partial pressure of the individual HAP compounds at T_1.

$P_{i,2}$ = Partial pressure of the individual HAP compounds at T_2.

n = Number of HAP compounds in the emission stream.

(2) If the final temperature to which the vessel contents are heated is at the boiling point or higher, you must calculate emissions using the procedure in paragraphs (c)(2)(i) and (ii) of this section.

(i) To calculate the emissions from heating to the boiling point use Equations 9, 10 and 11 of this section. (Note that $Pa_2 = 0$ in the calculation of $\Delta\eta$ in Equation 10 of this section.)

$$E = \Delta\eta \times \frac{\sum_{i=1}^{n}P_i MW_{HAP}}{P_T - \sum_{j=1}^{m}\left(P_j\right)} \quad \text{(Eq. 9)}$$

Where:

E = Mass of HAP emitted.

$\Delta\eta$ = The number of moles of noncondensable displaced from the vessel, as calculated using Equation 10 of this section.

P_T = Pressure in the receiver.

P_i = Partial pressure of the individual HAP determined at the exit temperature of the condenser or at the conditions of the dedicated receiver.
P_j = Partial pressure of the individual condensable (including HAP) determined at the exit temperature of the condenser or at the conditions of the dedicated receiver.
n = Number of HAP compounds in the emission stream.
i = Identifier for a HAP compound.
j = Identifier for a condensable compound.
MW_{HAP} = The average molecular weight of HAP in vapor exiting the dedicated receiver, as calculated using Equation 11 of this section with partial pressures determined at the exit temperature and exit pressure conditions of the condenser or at the conditions of the dedicated receiver.
m = Number of condensable compounds (including HAP) in the emission stream.

$$\Delta\eta = \frac{V}{R}\left[\left(\frac{Pa_1}{T_1}\right) - \left(\frac{Pa_2}{T_2}\right)\right] \qquad \text{(Eq. 10)}$$

$$MW_{HAP} = \sum_{i=1}^{n} \frac{\left((P_i)_{T_1} + (P_i)_{T_2}\right) MW_i}{\sum_{i=1}^{n}\left((P_i)_{T_1} + (P_i)_{T_2}\right)} \qquad \text{(Eq. 11)}$$

Where:

$\Delta\eta$ = Number of moles of noncondensable gas displaced from the vessel.
V = Volume of free space in the vessel.
R = Ideal gas law constant.
T_1 = Initial temperature of vessel contents, absolute.
T_2 = Final temperature of vessel contents, absolute.
Pan = Partial pressure of noncondensable gas in the vessel headspace at initial (n=1) and final (n=2) temperature.
MW_{HAP} = The average molecular weight of HAP in vapor exiting the dedicated receiver.
$(P_i)Tn$ = Partial pressure of each HAP in the vessel headspace at initial (T_1) and final (T_2) temperature of the receiver.
MW_i = Molecular weight of the individual HAP.
n = Number of HAP compounds in the emission stream.
i = Identifier for a HAP compound.

(ii) While boiling, the vessel must be operated with a properly operated process condenser. An initial demonstration that a process condenser is properly operated must be conducted during the boiling operation and documented in the notification of compliance status report described in § 63.11985(a). You must either measure the liquid temperature in the receiver or the temperature of the gas stream exiting the condenser and show it is less than the boiling or bubble point of the HAP in the vessel; or perform a material balance around the vessel and condenser and show that at least 99 percent of the recovered HAP vaporized while boiling is condensed. This demonstration is not required if the process condenser is followed by a condenser acting as a control device or if the control device is monitored using a CEMS.

(d) *Depressurization.* You must calculate emissions from depressurization using Equation 12 of this section.

$$E = \frac{V}{RT} \times \ln\left(\frac{P_1 - \sum_{j=1}^{m}(P_j)}{P_2 - \sum_{j=1}^{m}(P_j)}\right) \times \sum_{i=1}^{n}(P_i)(MW_i) \qquad \text{(Eq. 12)}$$

Where:

E = Emissions.
V = Free volume in vessel being depressurized.
R = Ideal gas law constant.
T = Temperature of the vessel, absolute.
P_1 = Initial pressure in the vessel.
P_2 = Final pressure in the vessel.
P_j = Partial pressure of the individual condensable compounds (including HAP).
MW_i = Molecular weight of the individual HAP compounds.
n = Number of HAP compounds in the emission stream.
m = Number of condensable compounds (including HAP) in the emission stream.
i = Identifier for a HAP compound.
j = Identifier for a condensable compound.
ln = Natural logarithm.

(e) *Vacuum systems.* You must calculate emissions from vacuum systems using Equation 13 of this section if the air leakage rate is known or can be approximated. The receiving vessel is part of the vacuum system for purposes of this subpart.

$$E = \frac{(La)(t)}{MW_{nc}} \left(\frac{\sum_{i=1}^{n} P_i MW_i}{P_T - \sum_{j=1}^{m} (P_j)} \right) \quad \text{(Eq. 13)}$$

Where:

E = Mass of HAP emitted.

P_T = Absolute pressure of receiving vessel or ejector outlet conditions, if there is no receiver.

P_i = Partial pressure of the HAP at the receiver temperature or the ejector outlet conditions.

P_j = Partial pressure of condensable (including HAP) at the receiver temperature or the ejector outlet conditions.

La = Total air leak rate in the system, mass/time.

MW_{nc} = Molecular weight of noncondensable gas.

t = Time of vacuum operation.

MWi = Molecular weight of the individual HAP in the emission stream, with HAP partial pressures calculated at the temperature of the receiver or ejector outlet, as appropriate.

(f) *Gas evolution.* You must calculate emissions from gas evolution using Equation 13 in paragraph (e) of this section with mass flow rate of gas evolution, Wg, substituted for La.

(g) *Air drying.* You must calculate emissions from air drying using Equation 14 of this section:

$$E = B \times \left(\frac{PS_1}{100 - PS_1} - \frac{PS_2}{100 - PS_2} \right) \quad \text{(Eq. 14)}$$

Where:

E = Mass of HAP emitted.

B = Mass of dry solids.

PS_1 = HAP in material entering dryer, weight percent.

PS_2 = HAP in material exiting dryer, weight percent.

(h) *Empty vessel purging.* You must calculate emissions from empty vessel purging using Equation 15 of this section (Note: The term e-Ft/v can be assumed to be 0):

$$E = \left(\frac{V}{RT} \times \left[\sum_{i=1}^{n} (P_i)(MW_i) \right] (1 - e^{-Ft/v}) \right) \quad \text{(Eq. 15)}$$

Where:

V = Volume of empty vessel.

R = Ideal gas law constant.

T = Temperature of the vessel vapor space; absolute.

P_i = Partial pressure of the individual HAP at the beginning of the purge.

MW_i = Molecular weight of the individual HAP.

F = Flow rate of the purge gas.

t = Duration of the purge.

n = Number of HAP compounds in the emission stream.

i = Identifier for a HAP compound.

(i) *Engineering assessments.* You must conduct an engineering assessment to calculate HAP emissions or emission episodes from each process vent that are not due to vapor displacement, partially filled vessel purging, heating, depressurization, vacuum operations, gas evolution, air drying or empty vessel purging. An engineering assessment may also be used to support a finding that the emissions estimation equations in this section are inappropriate. All data, assumptions and procedures used in the engineering assessment must be documented, are subject to preapproval by the Administrator, and must be reported in the batch precompliance report. An engineering assessment should include, but is not limited to, the items listed in paragraphs (i)(1) through (4) of this section.

(1) Previous test results provided the tests are representative of current operating practices at the process unit.

(2) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(3) Maximum flow rate, HAP emission rate, concentration, or other relevant parameter specified or implied within a permit limit applicable to the process vent.

(4) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to the following:

(i) Use of material balances based on process stoichiometry to estimate maximum organic HAP concentrations.

(ii) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities.

(iii) Estimation of HAP concentrations based on saturation conditions.

§ 63.11955 What are my initial and continuous compliance requirements for other emission sources?

(a) Before opening any process component (including pre-polymerization reactors used in the manufacture of bulk resins) for any reason, the quantity of vinyl chloride must be reduced to an amount that occupies a volume of no more than 2.0 percent of the component's or equipment's containment volume, or 25 gallons, whichever is larger, at standard temperature and pressure.

(b) Before opening a polymerization reactor for any reason, the quantity of vinyl chloride is not to exceed 0.04 pounds per ton of PVC product, with the product determined on a dry solids basis.

(c) Any gas or vapor HAP removed from a process component in

accordance with paragraphs (a) and (b) of this section must be vented to a closed vent system and control device meeting the requirements of §§ 63.11925 through 63.11950.

(d) Each gasholder in vinyl chloride service must meet the requirements of paragraphs (d)(1) through (3) of this section.

(1) Each gasholder must be vented to a closed vent system and control device meeting the requirements of §§ 63.11925 through 63.11950.

(2) Each gasholder must operate with one or more of the following installed on the water seal to reduce emissions:

(i) Floating balls;

(ii) Hollow floating disks;

(iii) Oil layer; and/or

(iv) Floating mats.

(3) Each gasholder must have established operating procedures that include provisions for ensuring that the requirements of paragraph (d)(2) of this section are met at all times except during periods of maintenance or repair. The standard operating procedures must be developed and implemented and made available to the Administrator upon request.

§ 63.11956 What are my compliance requirements for ambient monitoring?

You must operate a reliable and accurate vinyl chloride monitoring system for detection of major leaks and identification of the general area of the affected source where a leak is located. A vinyl chloride monitoring system means a device which obtains air samples from one or more points on a continuous sequential basis and analyzes the samples with gas chromatography or, if you assume that all hydrocarbons measured are vinyl chloride, analyzes the samples with infrared spectrophotometry, flame ion detection, or an equivalent or alternative method. You must operate the vinyl chloride monitoring system according to a program that you develop for your affected source. You must submit a description of the program to the Administrator within 45 days of your compliance date, unless a waiver of compliance is granted by the Administrator, or the program has been approved and the Administrator does not request a review of the program. Approval of a program will be granted by the Administrator provided the Administrator finds:

(a) The location and number of points to be monitored and the frequency of monitoring provided for in the program are acceptable when they are compared with the number of pieces of equipment in vinyl chloride service and size and physical layout of the affected source.

(b) It contains a definition of leak which is acceptable when compared with the background concentrations of vinyl chloride in the areas of the plant to be monitored by the vinyl chloride monitoring system. Measurements of background concentrations of vinyl chloride in the areas of the plant to be monitored by the vinyl chloride monitoring system are to be included with the description of the program. The definition of leak for a given plant may vary among the different areas within the plant and is also to change over time as background concentrations in the plant are reduced.

(c) It contains an acceptable plan of action to be taken when a leak is detected.

(d) It provides for an acceptable calibration and maintenance schedule for the vinyl chloride monitoring system and portable hydrocarbon detector. For the vinyl chloride monitoring system, a daily span check must be conducted with a concentration of vinyl chloride equal to the concentration defined as a leak according to paragraph (b) of this section. The calibration must be done with either:

(1) A calibration gas mixture prepared from the gases specified in sections 7.2.1 and 7.2.2 of Method 106 at 40 CFR part 61, appendix B, and in accordance with section 10.1 of Method 106, or

(2) A calibration gas cylinder standard containing the appropriate concentration of vinyl chloride. The gas composition of the calibration gas cylinder standard must have been certified by the manufacturer. The manufacturer must have recommended a maximum shelf life for each cylinder so that the concentration does not change greater than ±5 percent from the certified value. The date of gas cylinder preparation, certified vinyl chloride concentration, and recommended maximum shelf life must have been affixed to the cylinder before shipment from the manufacturer to the buyer. If a gas chromatograph is used as the vinyl chloride monitoring system, these gas mixtures may be directly used to prepare a chromatograph calibration curve as described in Sections 8.1 and 9.2 of Method 106. The requirements in Sections 7.2.3.1 and 7.2.3.2 of Method 106 for certification of cylinder standards and for establishment and verification of calibration standards are to be followed.

§ 63.11960 What are my initial and continuous compliance requirements for stripped resin?

(a) *Emission limits.* You must meet the applicable vinyl chloride and total non-vinyl chloride organic HAP emission limits for stripped resin specified in Table 1 or 2 to this subpart.

(b) *Determination of total non-vinyl chloride organic HAP.* You must develop a facility-specific list of HAP that are expected to be present in each grade of resin produced by your PVCPU. This list must be continuously updated and must be available for inspection by the Administrator. This list must include the identification of each grade of resin produced, each HAP expected to be present in that grade of resin, and the CAS number for each HAP.

(1) For the purposes of demonstrating initial and continuous compliance as required in paragraphs (c) and (d) of this section, you must meet the requirements specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) You must analyze each resin sample for all Table 10 HAP using the test methods specified in paragraph (e) of this section.

(ii) You must also analyze each resin sample for any HAP that are not a Table 10 HAP but are expected to be present in that resin sample based on your facility-specific list of HAP using the appropriate test method specified in paragraph (e) of this section.

(2) [Reserved]

(c) *Demonstration of initial compliance.* You must demonstrate initial compliance for each resin stripper or for each group of resin strippers used to process the same resin type.

(1) You must conduct an initial performance test for the resin stripper, measuring the concentration of vinyl chloride and total non-vinyl chloride organic HAP in the stripped resin at the outlet of each resin stripper as specified in paragraphs (c)(1)(i) through (iv) of this section.

(i) Use the test method(s) and procedures specified in paragraph (e) of this section.

(ii) Collect samples when the PVCPU is producing the resin grade of which you manufacture the most, based on the total mass per resin grade of a given resin type produced in the 12 months preceding the sampling event.

(iii) For continuous processes, during a 24-hour sampling period, for each resin grade produced, collect 1 grab sample at intervals of 8 hours or per grade of PVC produced, whichever is more frequent. Each sample must be taken as the resin flows out of the stripper.

(iv) For batch processes, during a 24-hour sampling period, for each batch of each resin grade produced, collect 1 grab sample for each batch. Each sample must be taken immediately following

the completion of the stripping operation.

(2) Demonstrate initial compliance with the vinyl chloride and total non-vinyl chloride organic HAP emission limits in Table 1 or 2 to this subpart as specified in paragraphs (c)(2)(i) and (ii) of this section.

(i) Calculate the 24-hour arithmetic average vinyl chloride and total non-vinyl chloride organic HAP concentrations for each stripper for each resin grade produced during the 24-hour sampling period, using the vinyl chloride and non vinyl-chloride HAP concentrations measured for the grab samples collected as specified in paragraph (c)(1)(iii) and (iv) of this section and using the calculation procedure specified in paragraph (f) of this section to determine the total non-vinyl chloride organic HAP concentration of each sample.

(ii) Demonstrate compliance with the vinyl chloride and total non-vinyl chloride organic HAP emission limits in Table 1 or 2 to this subpart based on the 24-hour arithmetic average concentrations calculated in either paragraph (c)(2)(ii)(A) or (B) of this section.

(A) If more than one resin grade was produced during the 24-hour sampling period, use Equation 1 of this section to calculate the 24-hour grade weighted arithmetic average vinyl chloride and total non-vinyl chloride organic HAP concentrations for each stripper, or for each group of strippers used to process the same type of resin, using the 24-hour average vinyl chloride and total non-vinyl chloride organic HAP concentrations calculated in paragraph (c)(2)(i) of this section and the mass of each resin grade produced during the 24-hour sampling period.

$$A_T = \frac{\Sigma_{i=1}^{n} P_{Gi} C_{Gi}}{Q_T} = \frac{P_{G_1} C_{G_1} + P_{G_2} C_{G_2} + \ \ldots \ + P_{Gn} C_{Gn}}{Q_T} \qquad \text{(Eq. 1)}$$

Where:

A_T = 24-hour average concentration of resin type T, parts per million by weight (dry basis).

P_{Gi} = Production of resin grade G_i, pounds.

C_{Gi} = 24-hour average concentration of vinyl chloride or total non-vinyl chloride organic HAP in resin grade G_i, ppmw.

Q_T = Total production of resin type T over the 24-hour sampling period, pounds.

(B) If only one resin grade was produced during the 24-hour sampling event, use the 24-hour arithmetic average vinyl chloride and total non-vinyl chloride organic HAP concentrations for the one resin grade calculated as specified in paragraph (c)(2)(i) of this section for each stripper or calculate the 24-hour arithmetic average vinyl chloride and total non-vinyl chloride organic HAP concentrations for all strippers used to process the one grade of resin.

(d) *Demonstration of continuous compliance.* You must demonstrate continuous compliance for each resin stripper or for each group of resin strippers used to process the same resin type.

(1) On a daily basis, you must measure the concentration of vinyl chloride in stripped resin using the test method(s) and procedures specified in paragraph (e) of this section, and the procedures specified in paragraphs (c)(1)(iii) and (iv) of this section.

(2) On a monthly basis, you must measure the concentration of total non-vinyl chloride organic HAP in stripped resin using the test method(s) and procedures specified in paragraph (e) of this section, and the procedures specified in paragraphs (c)(1)(iii) and (iv) of this section.

(3) You must demonstrate continuous compliance with the vinyl chloride and total non-vinyl chloride organic HAP emission limit for stripped resin in Table 1 or 2 to this subpart as specified in paragraphs (c)(2)(i) and (ii) of this section.

(e) *Test methods and procedures for determining concentration of vinyl chloride and total non-vinyl chloride organic HAP.* You must determine the concentration of vinyl chloride and total non-vinyl chloride organic HAP using the test methods and procedures specified in paragraphs (e)(1) through (3) of this section. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(1) For measuring total non-vinyl chloride organic HAP, you must use the methods specified in paragraphs (e)(1)(i) through (iv) of this section.

(i) SW–846–8260B (incorporated by reference, see § 63.14) for analysis of volatile organic compounds listed in Table 10 of this subpart.

(ii) SW–846–8270D (incorporated by reference, see § 63.14) for analysis of semivolatile organic compounds listed in table 10 of this subpart.

(iii) SW–846–8315A (incorporated by reference, see § 63.14) for analysis of aldehyde compounds listed in table 10 of this subpart.

(iv) SW–846–8015C (incorporated by reference, see § 63.14) for analysis of alcohol compounds listed in table 10 of this subpart.

(2) For measuring vinyl chloride, you must use Method 107 at 40 CFR part 61, appendix B.

(3) When using the methods specified in paragraphs (e)(1) and (2) of this section, for sample collection, preservation, transport, and analysis, you must minimize loss of HAP and maintain sample integrity.

(f) *Method for calculating total non-vinyl chloride organic HAP concentration.* For each stripped resin sample analyzed using the methods specified in paragraph (e) of this section, calculate the sum of the measured concentrations of each HAP analyzed as required in paragraphs (b)(1)(i) and (b)(1)(ii) of this section by using Equation 2 to this section.

$$C_{TNVCH} = \sum_{i=1}^{n} C_i \qquad \text{(Eq. 2)}$$

Where:

C_{TNVCH} = Concentration of total non-vinyl chloride organic HAP compounds in the stripped resin sample, in parts per million by weight (ppmw).

C_i = Concentration of individual HAP present in the stripped resin sample analyzed pursuant to paragraphs (b)(1)(i) and (b)(1)(ii) of this section excluding vinyl chloride, in ppmw, where a value of zero should be used for any HAP concentration that is below the detection limit.

§ 63.11965 What are my general compliance requirements for wastewater?

(a) The concentration of vinyl chloride and total non-vinyl chloride organic HAP in each process wastewater stream containing greater than the limits specified in Table 1 or 2 to this subpart, measured immediately as it leaves a piece of process equipment and before being mixed with any other process wastewater stream, must be reduced to the limits specified in Table 1 or 2 to this subpart. The applicable limits in

Table 1 or 2 to this subpart must be met before the process wastewater stream is mixed with any other process wastewater stream containing vinyl chloride or total non-vinyl chloride organic HAP concentrations less than the applicable limits specified in Table 1 or 2 to this subpart, before being exposed to the atmosphere, and before being discharged from the affected source.

(b) *Initial determination of process wastewater streams that need to be treated.* You must determine which process wastewater streams require treatment as specified in paragraphs (b)(1) and (2) of this section and meet the requirements of paragraphs (c) and (d) of this section.

(1) You must collect process wastewater samples as specified in paragraphs (b)(1)(i) and (ii) of this section.

(i) For treated process wastewater streams, you must collect process wastewater samples at the outlet of the treatment process and before the process wastewater stream is mixed with any other process wastewater stream containing vinyl chloride or total non-vinyl chloride organic HAP concentrations less than the applicable limits specified in Table 1 or 2 to this subpart, before being exposed to the atmosphere, and before being discharged from the affected source.

(ii) For untreated process wastewater streams, you must collect process wastewater samples at the location immediately as the stream leaves a piece of process equipment, before being mixed with any other process stream or process wastewater stream, before being exposed to the atmosphere, and before being discharged from the affected source.

(2) You must measure the concentration of vinyl chloride and total non-vinyl chloride organic HAP using the test methods and procedures specified in § 63.11980.

(c) *Requirements for process wastewater streams that must be treated.* Each process wastewater stream that has a vinyl chloride or total non-vinyl chloride organic HAP concentration equal to or greater than the limits specified in Table 1 or 2 to this subpart, determined pursuant to paragraph (a) of this section must be treated to reduce the concentration of vinyl chloride or total non-vinyl chloride organic HAP to below the applicable limits specified in Table 1 or 2 to this subpart. You must route wastewater streams through hard-piping to the treatment process and route the vent stream from the treatment process to a closed vent system and control device meeting the requirements of §§ 63.11925 through 63.11950. You must also meet the initial and continuous compliance requirements specified in § 63.11970(a) and § 63.11975.

(d) *Requirements for process wastewater streams that do not need to be treated.* For each process wastewater stream that has a vinyl chloride or total non-vinyl chloride organic HAP concentration less than the limits specified in Table 1 or 2 to this subpart, determined pursuant to paragraph (a) of this section, you must meet the initial and continuous compliance requirements specified in §§ 63.11970(b) and 63.11975(c).

(e) *Maintenance wastewater.* You must comply with the requirements specified in § 63.105 of subpart F of this part.

(f) *Determination of total non-vinyl chloride organic HAP.* You must develop a facility-specific list of HAP that are expected to be present in each process wastewater stream at your PVCPU. This list must be continuously updated and must be available for inspection by the Administrator. This list must include the identification of each HAP expected to be present in each process wastewater stream, and the CAS number for each HAP.

(1) For the purposes of demonstrating initial and continuous compliance as required in §§ 63.11970 and 63.11975 of this subpart, you must meet the requirements specified in paragraphs (f)(1)(i) and (ii) of this section.

(i) You must analyze each process wastewater sample for all HAP listed in Table 10 to this subpart using the test methods specified in § 63.11980(a)(2) and (3).

(ii) You must also analyze each process wastewater sample for any HAP that are not listed in Table 10 to this subpart but are expected to be present in that sample based on your facility-specific list of HAP using the appropriate test method specified in § 63.11980(a)(2).

(2) [Reserved]

§ 63.11970 What are my initial compliance requirements for process wastewater?

(a) *Demonstration of initial compliance for process wastewater streams that must be treated.* For each process wastewater stream that must be treated as specified in § 63.11965(b) and (c), you must conduct an initial performance test for the wastewater treatment process, measuring the concentration of vinyl chloride and total non-vinyl chloride organic HAP in the wastewater stream at the outlet of the wastewater treatment process before the wastewater is exposed to the atmosphere, mixed with any other process stream, and before being discharged from the affected facility, using the test method(s) and procedures specified in § 63.11980(a).

(b) *Demonstration of initial compliance for process wastewater streams that are not required to be treated.* For each process wastewater stream that has a vinyl chloride or total non-vinyl chloride organic HAP concentration less than the limits specified in Tables 1 or 2 to this subpart, you must use the measurement specified in § 63.11965(b)(1)(ii) to demonstrate initial compliance.

§ 63.11975 What are my continuous compliance requirements for process wastewater?

(a) For each process wastewater stream that must be treated to reduce the concentration of vinyl chloride or total non-vinyl chloride organic HAP as specified in § 63.11965(b) and (c), you must demonstrate continuous compliance as specified in paragraph (b) of this section. For each process wastewater stream for which you initially determine in § 63.11970(b) that treatment is not required to reduce either vinyl chloride or total non-vinyl chloride organic HAP concentration, you must demonstrate continuous compliance as specified in paragraph (c) of this section.

(b) For each process wastewater stream that must be treated according to § 63.11965(b), you must demonstrate continuous compliance with the emission limits for vinyl chloride and total non-vinyl chloride organic HAP specified in Table 1 or 2 to this subpart by following the procedures specified in paragraphs (b)(1) and (2) of this section.

(1) Following your demonstration of initial compliance in § 63.11970(a), make monthly measurements of the vinyl chloride and total non-vinyl chloride organic HAP concentrations using the procedures and methods specified in § 63.11965(b)(1) and (2).

(2) You must demonstrate continuous compliance with the emission limits in Table 1 or 2 to this subpart on a monthly basis, using the monthly concentration measurement specified in paragraph (b)(1) of this section.

(c) For each wastewater stream for which you initially determine in § 63.11970(b) that treatment is not required to reduce the vinyl chloride or total non-vinyl chloride organic HAP concentration, you must demonstrate continuous compliance as specified in paragraphs (c)(1) and (2) of this section.

(1) Conduct annual performance tests, measuring the vinyl chloride and total

non-vinyl chloride organic HAP concentrations using the procedures and methods specified in § 63.11965(b)(1) and (2).

(2) If any annual performance test conducted as specified in paragraph (c)(1) of this section results in a concentration of vinyl chloride or total non-vinyl chloride organic HAP in the process wastewater stream that is greater than or equal to the emission limits in Table 1 or 2 to this subpart, then you must meet the requirements of § 63.11965(c) and you must demonstrate initial and continuous compliance as specified in § 63.11970 and this section.

§ 63.11980 What are the test methods and calculation procedures for process wastewater?

(a) *Performance test methods and procedures.* You must determine the concentration of vinyl chloride and total non-vinyl chloride organic HAP using the test methods and procedures specified in paragraphs (a)(1) through (4) of this section. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(1) You must conduct performance tests during worst-case operating conditions for the PVCPU when the process wastewater treatment process is operating as close as possible to maximum operating conditions. If the wastewater treatment process will be operating at several different sets of operating conditions, you must supplement the testing with additional testing, modeling or engineering assessments to demonstrate compliance with the emission limits.

(2) For measuring total non-vinyl chloride organic HAP, you must conduct sampling and analysis using the methods specified in paragraphs (a)(2)(i) through (iv) of this section.

(i) SW–846–8260B (incorporated by reference, see § 63.14) for analysis of volatile organic compounds listed in Table 10 of this subpart.

(ii) SW–846–8270D (incorporated by reference, see § 63.14) for analysis of semivolatile organic compounds.

(iii) SW–846–8315A (incorporated by reference, see § 63.14) for analysis of aldehyde compounds.

(iv) SW–846–8015C (incorporated by reference, see § 63.14) for analysis of alcohol compounds.

(3) For measuring vinyl chloride, you must use Method 107 at 40 CFR part 61, appendix B.

(4) When using the methods in paragraphs (a)(2) and (3) of this section, you must meet the requirements in paragraphs (a)(4)(i) through (iii) of this section.

(i) Sample collection may consist of grab or composite samples.

(ii) Samples must be taken before the process wastewater stream is exposed to the atmosphere.

(iii) You must ensure that sample collection, preservation, transport, and analysis minimizes loss of HAP and maintains sample integrity.

(b) Method for calculating total non-vinyl chloride organic HAP concentration. For each process wastewater stream analyzed using the methods specified in paragraph (a) of this section, calculate the sum of the measured concentrations of each HAP analyzed as required in § 63.11965(f)(1) by using Equation 1 to this section.

$$C_{TNVCH} = \sum_{i=1}^{n} C_i \qquad \text{(Eq. 1)}$$

Where:

C_{TNVCH} = Concentration of total non-vinyl chloride organic HAP, in parts per million by weight (ppmw).

C_i = Concentration of individual HAP present in the sample analyzed pursuant to § 63.11965(f)(1) excluding vinyl chloride, in ppmw, where a value of zero should be used for any HAP concentration that is below the detection limit.

Notifications, Reports and Records

§ 63.11985 What notifications and reports must I submit and when?

In addition to the notifications and reports required in subpart A of this part, as specified in Table 4 to this subpart, you must submit the additional information and reports specified in paragraphs (a) through (c) of this section, as applicable.

(a) *Notification of compliance status.* When submitting the notification of compliance status required in § 63.9(h), you must also include the information specified in paragraphs (a)(1) through (9) of this section, as applicable.

(1) You must include an identification of the storage vessels subject to this subpart, including the capacity and liquid stored for each vessel. You must submit the information specified in paragraph (a)(2) of this section for each pressure vessel.

(2) You must include the information specified in § 63.1039(a) for equipment leaks.

(3) You must include an identification of the heat exchange systems that are subject to the requirements of this subpart.

(4) You must include the operating limit for each monitoring parameter identified for each control device used to meet the emission limits in Table 1 or 2 to this subpart, as determined pursuant to § 63.11935(d). This report must include the information in § 63.11935(d)(2), as applicable.

(5) You must include the records specified in paragraphs (a)(5)(i) through (iii) of this section, as applicable, for process vents.

(i) You must include the performance test records specified in § 63.11990(f)(1), as applicable. These reports must include one complete test report for each test method used for each process vent. A complete test report must include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations and any other information required by the test method. For additional tests performed for the same kind of emission point using the same method, the results and any other information required in applicable sections of this subpart must be submitted, but a complete test report is not required.

(ii) You must include the information specified in paragraphs (a)(5)(ii)(A) through (C) of this section for batch process vent operations.

(A) Descriptions of worst-case operating and/or testing conditions for control devices including results of emissions profiles.

(B) Calculations used to demonstrate initial compliance according to §§ 63.11945 and 63.11950, including documentation of the proper operation of a process condenser(s) as specified in § 63.11950(c)(2)(ii).

(C) Data and rationale used to support an engineering assessment to calculate emissions in accordance with § 63.11950(i).

(iii) If you use a control device other than those listed in § 63.11940 for your process vent, then you must include a description of the parameters to be monitored to ensure the control device is operated in conformance with its design and achieves the specified emission limitation; an explanation of the criteria used to select the parameter; and a description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device, the schedule for this demonstration, and a statement that you will establish an operating limit for the

monitored parameter as specified in paragraph (a)(4) of this section.

(6) [Reserved]

(7) You must include the records specified in paragraphs (a)(7)(i) and (ii) of this section, as applicable, for resin strippers.

(i) You must include an identification of each resin stripper and resin type subject to the requirements of this subpart.

(ii) You must include results of the initial testing used to determine initial compliance with the stripped resin limits in Table 1 or 2 to this subpart.

(8) You must include the records specified in paragraphs (a)(8)(i) and (ii) of this section, as applicable, for process wastewater.

(i) You must include an identification of each process wastewater stream subject to the requirements of this subpart, and the results of your determination for each stream as to whether it must be treated to meet the limits of Table 1 or 2 to this subpart. You must also include a description of the treatment process to be used for each process wastewater stream that requires treatment.

(ii) You must include results of the initial sampling used to determine initial compliance with the vinyl chloride and total non-vinyl chloride organic HAP limits in Table 1 or 2 to this subpart.

(9) You must include a certification of compliance, signed by a responsible official, as applicable that states the following:

(i) ''This facility complies with the requirements in this subpart for storage vessels.''

(ii) ''This facility complies with the requirements in this subpart for equipment leaks.''

(iii) ''This facility complies with the requirements in this subpart for heat exchange systems.''

(iv) ''This facility complies with the requirements in this subpart for HAP emissions from process vents.''

(v) ''This facility complies with the requirements in this subpart for other emission sources.''

(vi) ''This facility complies with the requirements in this subpart for the stripped resin.''

(vii) ''This facility complies with the requirements in this subpart for wastewater.''

(b) *Compliance reports.* When submitting the excess emissions and continuous monitoring system performance report and summary report required in § 63.10(e)(3), you must also include the information specified in paragraphs (b)(1) through (12) of this section, as applicable. This report is referred to in this subpart as your compliance report.

(1) You must include a copy of the inspection record specified in § 63.11990(b)(2) for each storage vessel when a defect, failure, or leak is detected. You must also include a copy of the applicable information specified in § 63.1039(b)(5) through (8) of subpart UU of this part for each pressure vessel.

(2) You must include the information specified in § 63.1039(b) for equipment leaks, except for releases from pressure relief devices. For any releases from pressure relief devices, you must submit the report specified in paragraph (c)(7) of this section instead of the information specified in § 63.1039(b)(4) of subpart UU of this part.

(3) You must include the information specified in paragraphs (b)(3)(i) through (vi) of this section for heat exchange systems.

(i) The number of heat exchange systems in HAP service.

(ii) The number of heat exchange systems in HAP service found to be leaking.

(iii) A summary of the monitoring data that indicate a leak, including the number of leaks determined to be equal to or greater than the leak definition.

(iv) If applicable, the date a leak was identified, the date the source of the leak was identified and the date of repair.

(v) If applicable, a summary of each delayed repair, including the original date and reason for the delay and the date of repair, if repaired during the reporting period.

(vi) If applicable, an estimate of total VOC or vinyl chloride emissions for each delayed repair over the reporting period.

(4) You must include the records specified in paragraphs (b)(4)(i) through (iii) of this section, as applicable, for process vents, resin strippers, and wastewater.

(i) Deviations using CEMS or CPMS. For each deviation from an emission limit or operating limit where a CEMS or CPMS is being used to comply with the process vent emission limits in Table 1 or 2 to this subpart, you must include the information in paragraphs (b)(4)(i)(A) through (E) of this section.

(A) For CEMS, the 3-hour block average value calculated for any period when the value is higher than an emission limit in Table 1 or 2 to this subpart or when the value does not meet the data availability requirements defined in § 63.11890(c).

(B) For CPMS, the average value calculated for any day (based on the data averaging periods for compliance specified in Table 5 to this subpart) that does not meet your operating limit established according to § 63.11935(d) or that does not meet the data availability requirements specified in § 63.11890(c).

(C) The cause for the calculated emission level or operating parameter level to not meet the established emission limit or operating limit.

(D) For deviations caused by lack of monitoring data, the duration of periods when monitoring data were not collected.

(E) Operating logs of batch process operations for each day during which the deviation occurred, including a description of the operating scenario(s) during the deviation.

(ii) New operating scenario. Include each new operating scenario that has been operated since the time period covered by the last compliance report and has not been submitted in the notification of compliance status report or a previous compliance report. For each new operating scenario, you must provide verification that the operating conditions for any associated control or treatment device have not been exceeded and constitute proper operation for the new operating scenario. You must provide any required calculations and engineering analyses that have been performed for the new operating scenario. For the purposes of this paragraph (b)(4)(ii), a revised operating scenario for an existing process is considered to be a new operating scenario when one or more of the data elements listed in § 63.11990(e)(4) have changed.

(iii) Process changes. You must document process changes, or changes made to any of the information submitted in the notification of compliance status report or a previous compliance report, that is not within the scope of an existing operating scenario, in the compliance report. The notification must include all of the information in paragraphs (b)(4)(iii)(A) through (C) of this section.

(A) A description of the process change.

(B) Revisions to any of the information reported in the original notification of compliance status report as provided in paragraph (a) of this section.

(C) Information required by the notification of compliance status report, as provided in paragraph (a) of this section, for changes involving the addition of processes, components, or equipment at the affected source.

(5) You must submit the applicable information specified in paragraphs (b)(5)(i) through (iii) of this section for process vents.

(i) For catalytic thermal oxidizers for which you have selected the alternative monitoring specified in § 63.11940(b)(3), results of the annual catalyst sampling and inspections required by § 63.11940(b)(3)(i) and (ii) including any subsequent corrective actions taken.

(ii) For regenerative adsorbers, results of the adsorber bed outlet volatile organic compounds concentration measurements specified in § 63.11940(d)(7).

(iii) For non-regenerative adsorbers, results of the adsorber bed outlet volatile organic compounds concentration measurements specified in § 63.11940(e)(2).

(6) You must include the records specified in § 63.11990(j) for other emission sources.

(7) For resin stripper operations, you must include results of daily vinyl chloride and monthly total non-vinyl chloride organic HAP concentration results for each resin type produced within the PVCPU that did not meet the stripped resin emission limits in Table 1 or 2 to this subpart, as applicable.

(8) You must include the information specified in paragraphs (b)(8)(i) and (ii) of this section for your wastewater streams.

(i) Results of daily vinyl chloride and monthly total non-vinyl chloride organic HAP concentration results for each process wastewater stream discharged from the affected source that did not meet the process wastewater emission limits in Tables 1 or 2 to this subpart.

(ii) If you must comply with § 63.11965, then you must include any other applicable information that is required by the reporting requirements specified in § 63.146.

(9) For closed vent systems subject to the requirements of § 63.11930, you must include the information specified in paragraphs (b)(9)(i) through (iv) of this section, as applicable.

(i) As applicable, records as specified in § 63.11930(g)(1)(i) for all times when flow was detected in the bypass line, the vent stream was diverted from the control device, or the flow indicator was not operating.

(ii) As applicable, records as specified in § 63.11930(g)(1)(ii) for all occurrences of all periods when a bypass of the system was indicated (the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has been broken).

(iii) Records of all times when monitoring of the system was not performed as specified in § 63.11930(d) and (e), or repairs were not performed as specified in § 63.11930(f), or records were not kept as specified in § 63.11930(g)(2).

(iv) Records of each time an alarm on a closed vent system operating in vacuum service is triggered as specified in § 63.11930(h) including the cause for the alarm and the corrective action taken.

(10) Closed vent system in vacuum service, bypass deviation, or pressure vessel closure device deviation report. If any pressure vessel closure device or closed vent system that contains a bypass has directly discharged to the atmosphere, or any closed vent system that is designed to be in vacuum service and is operating and but not in vacuum service, as specified in §§ 63.11910(c)(4), 63.11930(c) or 63.11930(h), you must submit to the Administrator the following information:

(i) The source, nature and cause of the discharge.

(ii) The date, time and duration of the discharge.

(iii) An estimate of the quantity of vinyl chloride and total HAP emitted during the discharge and the method used for determining this quantity.

(iv) The actions taken to prevent this discharge.

(v) The measures adopted to prevent future such discharges

(11) Affirmative defense report. If you seek to assert an affirmative defense, as provided in § 63.11895, then you must submit a written report as specified in § 63.11895(b) to demonstrate, with all necessary supporting documentation, that you have met the requirements set forth in § 63.11895(a).

(12) Overlap with Title V reports. Information required by this subpart, which is submitted with a Title V periodic report, does not need to be included in a subsequent compliance report required by this subpart or subpart referenced by this subpart. The Title V report must be referenced in the compliance report required by this subpart.

(c) *Other notifications and reports.* You must submit the other notification and reports, as specified in paragraphs (c)(1) through (9) of this section, as applicable.

(1) Notification of inspection. To provide the Administrator the opportunity to have an observer present, you must notify the Administrator at least 30 days before an inspection required by § 63.11910(a)(3). If an inspection is unplanned and you could not have known about the inspection 30 days in advance, then you must notify the Administrator at least 7 days before the inspection. Notification must be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, the notification including the written documentation may be made in writing and sent so that it is received by the Administrator at least 7 days before the inspection. If a delegated state or local agency is notified, you are not required to notify the Administrator. A delegated state or local agency may waive the requirement for notification of inspections.

(2) Batch precompliance report. You must submit a batch precompliance report at least 6 months prior to the compliance date of this subpart that includes a description of the test conditions, data, calculations and other information used to establish operating limits according to § 63.11935(d) for all batch operations. If you use an engineering assessment as specified in § 63.11950(i), then you must also include data or other information supporting a finding that the emissions estimation equations in § 63.11950(a) through (h) are inappropriate. If the EPA disapproves the report, then you must still be in compliance with the emission limitations and work practice standards of this subpart by your compliance date. To change any of the information submitted in the report, you must notify the EPA 60 days before you implement the planned change.

(3) Other control device reporting provisions. If you are using a control device other than those listed in this subpart, then you must submit the information as specified in paragraphs (c)(3)(i) through (iii) of this section.

(i) A description of the proposed control device.

(ii) A description of the parameter(s) to be monitored to ensure the control device is operated in conformance with its design and achieves the performance level as specified in this subpart and an explanation of the criteria used to select the parameter(s).

(iii) The frequency and content of monitoring, recording, and reporting if monitoring and recording is not continuous, or if the compliance report information, as specified in paragraph (b)(4)(i)(A) of this section, will not contain 3-hour block average values when the monitored parameter value does not meet the established operating limit. The rationale for the proposed monitoring, recording and reporting system must be included.

(4) Request for approval to use alternative monitoring methods. Prior to your initial notification of compliance status, you may submit requests for approval to use alternatives to the

continuous operating parameter monitoring specified in this rule, as provided for in § 63.11940(h), following the same procedure as specified in § 63.8. The information specified in paragraphs (c)(4)(i) and (ii) of this section must be included.

(i) A description of the proposed alternative system.

(ii) Information justifying your request for an alternative method, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required method.

(5) Request for approval to monitor alternative parameters. Prior to your initial notification of compliance status, you may submit requests for approval to monitor a different parameter than those established in § 63.11935(d), following the same procedure as specified for alternative monitoring methods in § 63.8. The information specified in paragraphs (c)(5)(i) through (iii) of this section must be included in the request.

(i) A description of the parameter(s) to be monitored to ensure the control technology or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit and an explanation of the criteria used to select the parameter(s).

(ii) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device, the schedule for this demonstration, and a statement that you will establish an operating limit for the monitored parameter(s) as part of the notification of compliance status if required under this subpart, unless this information has already been submitted.

(iii) The frequency and content of monitoring, recording, and reporting, if monitoring and recording is not continuous. The rationale for the proposed monitoring, recording, and reporting system must be included.

(6) [Reserved]

(7) Pressure relief device deviation report. If any pressure relief device in HAP service has discharged to the atmosphere as specified in § 63.11915(c), then you must submit to the Administrator within 10 days of the discharge the following information:

(i) The source, nature, and cause of the discharge.

(ii) The date, time, and duration of the discharge.

(iii) An estimate of the quantity of vinyl chloride and total HAP emitted during the discharge and the method used for determining this quantity.

(iv) The actions taken to prevent this discharge.

(v) The measures adopted to prevent future such discharges.

(8) Commencing and ceasing operation of continuous emissions monitoring systems. Before starting or stopping the use of CEMS you must notify the Administrator as specified in § 63.11935(b)(7).

(9) *Data submittal.* (i) Within 60 days after the date of completing each performance test (see § 63.2) required by this subpart, you must submit the results of performance tests electronically to the EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through the EPA's Central Data Exchange (CDX) (*http://www.epa.gov/cdx*). Performance test data must be submitted in the file format generated through use of the EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/ert_tool.html*). Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically to WebFIRE. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives) to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to the EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including the confidential business information, to the delegated authority in the format specified by the delegated authority.

(ii) Within 60 days after the date of completing each CEMS performance evaluation test (see § 63.2), you must submit the relative accuracy test audit data electronically into the EPA's CDX by using the ERT, as mentioned in paragraph (c)(9)(i) of this section. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically to the EPA's CDX.

(iii) All reports required by this subpart not subject to the requirements in paragraphs (c)(9)(i) and (ii) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. The Administrator or the delegated authority may request a report in any form suitable for the specific case (*e.g.,* by electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to paragraphs (c)(9)(i) and (ii) of this section in paper format.

§ 63.11990 What records must I keep?

You must keep records as specified in paragraphs (a) through (j) of this section, as applicable.

(a) *Copies of reports.* You must keep a copy of each notification and report that you submit to comply with this subpart, including all documentation supporting any notification or report. You must also keep copies of the current versions of the site-specific performance evaluation test plan, site-specific monitoring plan, and the equipment leak detection and repair plan.

(b) *Storage vessels.* For storage vessels, you must maintain the records specified in paragraphs (b)(1) through (6) of this section.

(1) You must keep a record of the dimensions of the storage vessel, an analysis of the capacity of the storage vessel and an identification of the liquid stored.

(2) Inspection records for fixed roofs complying with § 63.11910 including the information specified in paragraphs (b)(2)(i) and (ii) of this section.

(i) Record the date of each inspection required by § 63.11910(a)(3).

(ii) For each defect detected during an inspection required by § 63.11910(a)(3), record the location of the defect, a description of the defect, the date of detection and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with § 63.11910(a)(4)(ii), also record the reason for the delay and the date that completion of repair of the defect is expected.

(3) [Reserved]

(4) For pressure vessels, you must keep the records specified in paragraph (c) of this section for each pressure vessel.

(5) For internal and external floating roof storage vessels, you must maintain the records required in § 63.1065 of subpart WW of this part.

(6) For fixed roof storage vessels that route emissions through a closed vent system to a control device, during periods of planned routine maintenance of a control device, record the day and time at which planned routine maintenance periods begin and end, and the type of maintenance performed on the control device. If you need more than 240 hr/yr, keep a record that explains why additional time up to 360

hr/yr was needed and describes how you minimized the amount of additional time needed.

(c) *Equipment leaks.* For equipment leaks, you must maintain the records specified in § 63.1038 of subpart UU of this part for equipment leaks and a record of the information specified in § 63.11930(g)(4) for monitoring instrument calibrations conducted according to § 63.11930(e)(2).

(d) *Heat exchange systems.* For a heat exchange system subject to this subpart, you must keep the records specified in paragraphs (d)(1) through (6) of this section.

(1) Identification of all heat exchangers at the facility and the measured or estimated average annual HAP concentration of process fluid or intervening cooling fluid processed in each heat exchanger.

(2) Identification of all heat exchange systems that are in HAP service. For each heat exchange system that is subject to this subpart, you must include identification of all heat exchangers within each heat exchange system, identification of the individual heat exchangers in HAP service within each heat exchange system, and for closed-loop recirculation systems, the cooling tower included in each heat exchange system.

(3) Identification of all heat exchange systems that are exempt from the monitoring requirements according to the provisions in § 63.11920(b) and the provision under which the heat exchange system is exempt.

(4) Results of the following monitoring data for each monitoring event:

(i) Date/time of event.

(ii) Heat exchange exit line flow or cooling tower return line flow at the sampling location, gallons/minute.

(iii) Monitoring method employed.

(iv) The measured cooling water concentration for each of target analyte (parts per billion by weight).

(v) Calibration and recovery information identified in the test method used.

(5) The date when a leak was identified and the date when the heat exchanger was repaired or taken out of service.

(6) If a repair is delayed, the reason for the delay, the schedule for completing the repair, and the estimate of potential emissions for the delay of repair.

(e) *Process vent monitoring.* You must include the records specified in paragraphs (e)(1) through (4) of this section, as applicable, for process vent monitoring.

(1) Continuous records. Where this subpart requires a continuous record using CEMS or CPMS, you must maintain, at a minimum, the records specified in § 63.10(b)(2)(vii)(A).

(2) Excluded data. In any average computed to determine compliance, you must exclude monitoring data recorded during periods specified in paragraphs (e)(2)(i) through (iii) of this section.

(i) Periods of non-operation of the process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(ii) Periods of no flow to a control device.

(iii) Monitoring system malfunctions, repairs associated with monitoring system malfunctions or required monitoring system quality assurance or control activities, as specified in § 63.11890(c)(2).

(3) Records of calculated emission and operating parameter values. You must retain for 5 years, a record of CEMS and CPMS data as specified in paragraphs (e)(3)(i) and (ii) of this section, unless an alternative recordkeeping system has been requested and approved.

(i) Except as specified in paragraph (e)(3)(ii) of this section, retain for 5 years, the records of the average values for each continuously monitored operating parameter and pollutant specified in §§ 63.11925(e)(3)(ii) and 63.11925(e)(4)(ii)(B) for CEMS and CPMS.

(ii) In lieu of calculating and recording the average value specified in paragraphs (e)(3)(i) of this section, if all 1-hour averages specified in § 63.11935(e) demonstrate compliance with your parameter operating limit or the applicable pollutant emission limit in Table 1 or 2 to this subpart for the block average period, you may record a statement that all recorded 1-hour averages met the operating limit or emission limit, as applicable, and retain for 5 years this statement and all recorded CPMS or CEMS data for the block average period.

(4) Information to be included in records. You must keep records of each operating scenario as specified in paragraphs (e)(4)(i) through (viii) of this section, as applicable.

(i) You must keep a schedule or log of operating scenarios, updated each time a different operating scenario is put into effect.

(ii) A description of the process and the type of process components used.

(iii) An identification of related process vents including their associated emissions episodes.

(iv) The applicable control requirements of this subpart for process vents.

(v) The control device, including a description of operating and testing conditions.

(vi) Combined emissions that are routed to the same control device.

(vii) The applicable monitoring requirements of this subpart and any operating limit that assures compliance for all emissions routed to the control device.

(viii) Calculations and engineering analyses required to demonstrate compliance.

(f) *Process vents.* You must include the records specified in paragraphs (f)(1) and (2) of this section, as applicable, for process vents.

(1) Records of performance tests as required in § 63.10(b)(2)(viii). You must also collect the applicable control device operating parameters required in § 63.11940 over the full period of the performance test.

(2) If you use a control device to comply with this subpart and you are required to use CPMS, then you must keep up-to-date and readily accessible records for your process vents as specified in paragraphs (f)(2)(i) through (iv) of this section, as applicable.

(i) If you use a flow indicator, then you must keep records of periods of no flow to the control device, including the start and stop time and dates of periods of flow and no flow.

(ii) If you use a catalytic oxidizer for which you have selected the alternative monitoring specified in § 63.11940(b)(3), then you must also maintain records of the results of the annual catalyst sampling and inspections required by § 63.11940(b)(3)(i) and (ii) including any subsequent corrective actions taken.

(iii) If you use a regenerative adsorber as specified in § 63.11940(d), then the records specified in paragraphs (f)(2)(iii)(A) through (H) of this section, as applicable, must be kept.

(A) Records of total regeneration stream mass flow for each adsorber-bed regeneration cycle.

(B) Records of the temperature of the adsorber bed after each regeneration and within 15 minutes of completing any cooling cycle.

(C) For non-vacuum and non-steam regeneration systems, records of the temperature of the adsorber bed during each regeneration except during any temperature regulating (cooling or warming to bring bed temperature closer to vent gas temperature) portion of the regeneration cycle.

(D) If adsorber regeneration vacuum is monitored pursuant to § 63.11940(d)(4), then you must keep records of the

vacuum profile over time and the amount of time the vacuum level is below the minimum vacuum target for each adsorber-bed regeneration cycle.

(E) Records of the regeneration frequency and duration.

(F) Daily records of the verification inspections, including the visual observations and/or any activation of an automated alarm or shutdown system with a written entry into a log book or other permanent form of record.

(G) Records of the maximum volatile organic compound or HAP outlet concentration observed over the last 5 minutes of the adsorption cycle for each adsorber bed. Records must be weekly or for every regeneration cycle if the regeneration cycle is greater than 1 week.

(H) Records of the date and time the adsorbent had last been replaced.

(iv) If you use a non-regenerative adsorber as specified in § 63.11940(e), then the records specified in paragraphs (f)(2)(iv)(A) through (C) of this section, as applicable, must be kept.

(A) A record of the average life of the bed, as determined by § 63.11940(e)(1), including the date the average life was determined.

(B) Daily, weekly, or monthly records of the maximum volatile organic compound or HAP outlet concentration, as specified by § 63.11940(e)(2).

(C) Records of bed replacement including the date and time the adsorbent had last been replaced, and the date and time in which breakthrough is detected.

(g) *Closed vent systems.* You must keep the records specified in paragraphs (g)(1) through (6) of this section, and you must record any additional information as specified in § 63.11930, as applicable.

(1) Each alarm triggered because flow was detected in a bypass as specified in § 63.11930(g)(1)(i).

(2) Inspections of seals or closure mechanisms as specified in § 63.11930(g)(1)(ii).

(3) Copies of compliance reports for closed vent system leak inspections as specified in § 63.11985(b)(9) and § 63.11930(g)(2) and (3).

(4) Instrument calibration records as specified in § 63.11930(g)(4).

(5) Unsafe-to-inspect equipment as specified in § 63.11930(g)(5).

(6) Pressure alarms as specified by § 63.11930(h)(2) and (3).

(h) *Resin strippers.* For resin strippers, you must maintain the records specified in paragraphs (h)(1) and (2) of this section.

(1) All resin sampling data, including daily measurements of the concentration of vinyl chloride and monthly measurements of the total non-vinyl chloride organic HAP compounds in the stripped resin for each type and grade of resin produced. Each sample must be identified by the resin type and resin grade, the date and time the sample was taken, identification of the resin stripper from which the sample was taken, and the corresponding quantity (pounds) of resin processed by the stripper for the batch or over the time period represented by the sample.

(2) The total quantity (pounds) of each resin grade produced per day and the total quantity of resin processed by each resin stripper, identified by resin type and resin grade, per day.

(i) *Process wastewater.* For treatment processes, you must maintain the records specified in paragraphs (i)(1) through (5) of this section.

(1) A description of the process wastewater generation activities and treatment process.

(2) Records of the treatment determinations specified in § 63.11965(b) for each wastewater stream and the type of treatment applied if required in § 63.11965(c).

(3) Records of the initial performance test specified in § 63.11970(a) and (b).

(4) All testing data, including monthly measurements of the concentrations of vinyl chloride and the concentration of total non-vinyl chloride organic HAP in each process wastewater stream required to be measured, as specified in § 63.11975.

(5) You must keep any other applicable records that are required by the recordkeeping requirements specified in § 63.147 of subpart G of this part.

(j) *Other emission sources.* You must keep the records specified in paragraphs (j)(1) and (2) of this section.

(1) All engineering calculations, testing, sampling, and monitoring results and data specified in § 63.11955.

(2) Each occurrence that you do not comply with the requirements in § 63.11955.

§ 63.11995 In what form and how long must I keep my records?

(a) You must keep records for 5 years in a form suitable and readily available for expeditious review, as specified in § 63.10(b)(1).

(b) You must keep each record on site for at least 2 years, as specified in § 63.10(b)(1). You can keep the records off site for the remaining 3 years. Records may be maintained in hard copy or computer-readable format including, but not limited to, on paper, microfilm, hard disk drive, floppy disk, compact disk, magnetic tape or microfiche.

§ 63.12000 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the Administrator, as defined in § 63.2, or a delegated authority such as your state, local or tribal agency. If the Administrator has delegated authority to your state, local or tribal agency, then that agency (as well as the Administrator) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your state, local or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local or tribal agency, the authorities listed in paragraphs (b)(1) through (4) of this section are retained by the Administrator and are not transferred to the state, local or tribal agency, however, the EPA retains oversight of this subpart and can take enforcement actions, as appropriate.

(1) Approval of alternatives to the emission limits, operating limits, and work practice standards specified in this subpart.

(2) Approval of a major change to test methods, as defined in § 63.90, approval of any proposed analysis methods, and approval of any proposed test methods.

(3) Approval of a major change to monitoring, as defined in § 63.90.

(4) Approval of a major change to recordkeeping and reporting, as defined in § 63.90.

Definitions

§ 63.12005 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section, as follows:

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

Batch emission episode means a discrete venting episode that is associated with a single unit operation. A unit operation may have more than one batch emission episode. For example, a displacement of vapor resulting from the charging of a vessel with HAP will result in a discrete emission episode that will last through the duration of the charge and will have an average flowrate equal to the rate of the charge. If the vessel is then heated, there will also be another discrete emission episode resulting from the expulsion of expanded vapor. Both

emission episodes may occur in the same vessel or unit operation. There are possibly other emission episodes that may occur from the vessel or other process components, depending on process operations.

Batch operation means a noncontinuous operation involving intermittent or discontinuous feed into process components, and, in general, involves the emptying of the process components after the operation ceases and prior to beginning a new operation. Addition of raw material and withdrawal of product do not occur simultaneously in a batch operation.

Batch process vent means a vent from a batch operation from a PVCPU through which a HAP-containing gas stream has the potential to be released to the atmosphere except that it is required by this subpart to routed to a closed vent system and control device. Emissions for all emission episodes associated with the unit operation(s) are part of the batch process vent. Batch process vents also include vents with intermittent flow from continuous operations. Examples of batch process vents include, but are not limited to, vents on condensers used for product recovery, polymerization reactors, and process tanks.

Bottoms receiver means a tank that collects bottoms from continuous distillation before the stream is sent for storage or for further downstream processing. A rundown tank is an example of a bottoms receiver.

Bulk process means a process for producing polyvinyl chloride resin that is characterized by a two-step anhydrous polymerization process: the formation of small resin particles in a pre-polymerization reactor using small amounts of vinyl chloride monomer, an initiator, and agitation; and the growth of the resin particles in a post-polymerization reactor using additional vinyl chloride monomer. Resins produced using the bulk process are referred to as bulk resins.

Bypass means diverting a process vent or closed vent system stream to the atmosphere such that it does not first pass through an emission control device.

Calendar year means the period between January 1 and December 31, inclusive for a given year.

Capacity means the nominal figure or rating given by the manufacturer of the storage vessel, condenser, or other process component.

Car-seal means a seal that is placed on a device that is used to change the position of a valve (e.g., from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Closed vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that collect or transport gas or vapor from an emission point to a control device.

Combustion device means an individual unit used for the combustion of organic emissions, such as a flare, incinerator, process heater, or boiler.

Conservation vent means an automatically operated (*e.g.,* weight-loaded or spring-loaded) safety device used to prevent the operating pressure of a storage vessel from exceeding the maximum allowable working pressure of the process component. Conservation vents must be designed to open only when the operating pressure of the storage vessel exceeds the maximum allowable working pressure of the process component. Conservation vents open and close to permit only the intake or outlet relief necessary to keep the storage vessel within permissible working pressures, and reseal automatically.

Container means a portable unit in which a material can be stored, transported, treated, disposed of or otherwise handled. Examples of containers include, but are not limited to, drums, pails, and portable cargo containers known as ''portable tanks'' or ''totes.'' Container does not include transport vehicles or barges.

Continuous emission monitoring system (CEMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of emissions.

Continuous operation means any operation that is not a batch operation.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Continuous process vent means a vent from a continuous PVCPU operation through which a HAP-containing gas stream has the potential to be released to the atmosphere except that it is required by this subpart to routed to a closed vent system and control device and has the following characteristics:

(1) The gas stream originates as a continuous flow from any continuous PVCPU operation during operation of the PVCPU.

(2) The discharge into the closed vent system and control device meets at least one of the following conditions:

(i) Is directly from any continuous operation.

(ii) Is from any continuous operation after passing solely (*i.e.,* without passing through any other unit operation for a process purpose) through one or more recovery devices within the PVCPU.

(iii) Is from a device recovering only mechanical energy from a gas stream that comes either directly from any continuous operation, or from any continuous operation after passing solely (*i.e.,* without passing through any other unit operation for a process purpose) through one or more recovery devices within the PVCPU.

Continuous PVCPU operation means any operation that is not a batch operation or an operation that generates a miscellaneous process vent.

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 63.11990(e)(1).

Control device means, with the exceptions noted in this definition, a combustion device, recovery device, recapture device or any combination of these devices used to comply with this subpart. Process condensers are not control devices.

Control system means the combination of the closed vent system and the control devices used to collect and control vapors or gases from a regulated emission source.

Cooling tower means a heat removal device used to remove the heat absorbed in circulating cooling water systems by transferring the heat to the atmosphere using natural or mechanical draft.

Cooling tower return line means the main water trunk lines at the inlet to the cooling tower before exposure to the atmosphere.

Corrective action plan means a description of all reasonable interim and long-term measures, if any, that are available, and an explanation of why the selected corrective action is the best alternative, including, but not limited to, any consideration of cost-effectiveness.

Day means a calendar day, unless otherwise specified in this subpart.

Dioxin/furans means total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Dispersion process means a process for producing polyvinyl chloride resin that is characterized by the formation of the polymers in soap micelles that contain small amounts of vinyl chloride monomer. Emulsifiers are used to

disperse vinyl chloride monomer in the water phase. Initiators used in the dispersion process are soluble in water. Resins produced using the dispersion process are referred to as latex or dispersion resins.

Empty or emptying means the partial or complete removal of stored liquid from a storage vessel. Storage vessels that contain liquid only as a result of the liquid clinging to the walls or bottoms, or resting in pools due to bottom irregularities, are considered completely empty.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector and instrumentation system in HAP service; and any control devices or systems used to comply with this subpart.

Fill or filling means the introduction of liquid into a storage vessel, but not necessarily to capacity.

First attempt at repair, for the purposes of this subpart, means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 63.11930(f) to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

Fixed roof storage vessel means a vessel with roof that is mounted (*i.e.,* permanently affixed) on a storage vessel and that does not move with fluctuations in stored liquid level.

Flow indicator means a device that indicates whether gas flow is, or whether the valve position would allow gas flow to be, present in a line.

Gasholder means a surge control vessel with a bell that is floating in a vessel filled with water that is used to store gases from the PVC production process prior to being recovered or sent to a process vent control device. The bell rises and falls as low-pressure gases enter and leave the space beneath the bell and the water provides a seal between the enclosed gas within the floating bell and the ambient air.

Grade means the subdivision of PVC resin that describes it as a unique resin, *i.e.,* the most exact description of a type of resin with no further subdivision. Examples include low molecular weight suspension resins and general purpose suspension resins.

Hard-piping means pipes or tubing that are manufactured and properly installed using good engineering judgment and an appropriate standard method published by a consensus-based standards organization if such a method exists or you may use an industry standard practice. Consensus-based standards organizations include, but are not limited to, American National Standards Institute (ANSI, 1819 L Street NW., 6th floor, Washington, DC 20036, (202) 293–8020, *http://www.ansi.org*).

Heat exchange system means a device or collection of devices used to transfer heat from process fluids to water without intentional direct contact of the process fluid with the water (*i.e.,* non-contact heat exchanger) and to transport and/or cool the water in a closed-loop recirculation system (cooling tower system) or a once-through system (*e.g.,* river or pond water). For closed-loop recirculation systems, the heat exchange system consists of a cooling tower, all heat exchangers that are serviced by that cooling tower and all water lines to and from the heat exchanger(s). For once-through systems, the heat exchange system consists of one or more heat exchangers servicing an individual process unit and all water lines to and from the heat exchanger(s). Intentional direct contact with process fluids results in the formation of a wastewater.

Heat exchanger exit line means the cooling water line from the exit of one or more heat exchangers (where cooling water leaves the heat exchangers) to either the entrance of the cooling tower return line or prior to exposure to the atmosphere or mixing with non-cooling water streams, in, as an example, a once-through cooling system, whichever occurs first.

In HAP service means that a process component either contains or contacts a liquid that is at least 5-percent HAP by weight or a gas that is at least 5 percent by volume HAP as determined according to the provisions of § 63.180(d). For the purposes of this definition, the term ''organic HAP'' as used in § 63.180(d) means HAP. The provisions of § 63.180(d) also specify how to determine that a process component is not in HAP service.

In vacuum service means that the process component is operating at an internal pressure that is at least 5 kilopascals (kPa) (0.7 pounds per square inch absolute) below ambient pressure.

Incinerator means an enclosed combustion device with an enclosed fire box that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. This energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the PVCPU into an individual drain system prior to or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewaters include descaling of heat exchanger tubing bundles, hydroblasting PVCPU process components such as polymerization reactors, vessels and heat exchangers, draining of low legs and high point bleeds, draining of pumps into an individual drain system, draining of portions of the PVCPU for repair and water used to wash out process components or equipment after the process components or equipment has already been opened to the atmosphere and has met the requirements of § 63.11955.

Maximum representative operating conditions means process operating conditions that result in the most challenging condition for the control device. The most challenging condition for the control device may include, but is not limited to, the highest or lowest HAP mass loading rate to the control device, the highest or lowest HAP mass loading rate of constituents that approach the limits of solubility for scrubbing media, the highest or lowest HAP mass loading rate of constituents that approach limits of solubility for scrubbing media.

Maximum true vapor pressure means the equilibrium partial pressure exerted by the total HAP in the stored or transferred liquid at the temperature equal to the highest calendar-month average of the liquid storage or transfer temperature for liquids stored or transferred above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored or transferred at the ambient temperature, as determined by any one of the following methods or references:

(1) In accordance with methods described in API MPMS 19.2 (incorporated by reference, see § 63.14).

(2) As obtained from standard reference texts.

(3) As determined by ASTM D2879–83 or ASTM D2879–96 (incorporated by reference, see § 63.14).

(4) Any other method approved by the Administrator.

Miscellaneous vent means gaseous emissions from samples, loading and unloading lines, slip gauges, process wastewater treatment systems and pressure relief devices that are routed through a closed vent system to a control device and that are not equipment leaks.

Nonstandard batch means a batch process that is operated outside of the range of operating conditions that are documented in an existing operating scenario, but is still a reasonably anticipated event. For example, a nonstandard batch occurs when additional processing or processing at different operating conditions must be conducted to produce a product that is normally produced under the conditions described by the standard batch. A nonstandard batch may be necessary as a result of a malfunction, but it is not itself a malfunction.

Operating block means a period of time that is equal to the time from the beginning to end of batch process operations within a process.

Operating day means a 24-hour period between 12 midnight and the following midnight during which PVC is produced at any time in the PVCPU. It is not necessary for PVC to be produced for the entire 24-hour period.

Operating scenario means, for the purposes of reporting and recordkeeping, any specific operation of a regulated process as described by reports specified in § 63.11985(b)(4)(ii) and records specified in § 63.11990(e)(4).

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased or operated by the same entity, parent entity, subsidiary or any combination thereof.

Polymerization reactor means any vessel in which vinyl chloride is partially or totally polymerized into polyvinyl chloride. For bulk processes, the polymerization reactor includes pre-polymerization reactors and post-polymerization reactors.

Polyvinyl chloride means either polyvinyl chloride homopolymer or polyvinyl chloride copolymer.

Polyvinyl chloride and copolymers production process unit or PVCPU means a collection of process components assembled and connected by hard-piping or duct work, used to process raw materials and to manufacture polyvinyl chloride and/or polyvinyl chloride copolymers. A PVCPU includes, but is not limited to, polymerization reactors; resin stripping operations; resin blend tanks; resin centrifuges; resin dryers; resin product separators; recovery devices; reactant and raw material charge vessels and tanks, holding tanks, mixing and weighing tanks; finished resin product storage tanks or storage silos; finished resin product loading operations; connected ducts and piping; equipment including pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves and connectors and instrumentation systems. A PVCPU does not include chemical manufacturing process units, as defined in § 63.101, that produce vinyl chloride monomer or other raw materials used in the PVC polymerization process.

Polyvinyl chloride copolymer means a synthetic thermoplastic polymer that is derived from the simultaneous polymerization of vinyl chloride and another monomer such as vinyl acetate. Polyvinyl chloride copolymer is produced by different processes, including, but not limited to, suspension, dispersion/emulsion, suspension blending, and solution processes.

Polyvinyl chloride homopolymer means a synthetic thermoplastic polymer that is derived from the polymerization of vinyl chloride and has the general chemical structure (-H2CCHCl-)n. Polyvinyl chloride homopolymer is typically a white powder or colorless granule. Polyvinyl chloride homopolymer is produced by different processes, including (but not limited to), suspension, dispersion/emulsion, blending, and bulk processes.

Pressure relief device means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process component. A common pressure relief device is a spring-loaded pressure relief valve.

Pressure vessel means a vessel that is used to store liquids or gases and is designed not to vent to the atmosphere as a result of compression of the vapor headspace in the pressure vessel during filling of the pressure vessel to its design capacity.

Process change means an addition to or change in a PVCPU and/or its associated process components that creates one or more emission points or changes the characteristics of an emission point such that a new or different emission limit, operating parameter limit, or work practice requirement applies to the added or changed emission points. Examples of process changes include, but are not limited to, changes in production capacity, production rate, or catalyst type, or whenever there is replacement, removal, or addition of recovery device components. For purposes of this definition, process changes do not include process upsets, changes that do not alter the process component configuration and operating conditions, and unintentional, temporary process changes. A process change does not include moving within a range of conditions identified in the standard batch, and a nonstandard batch does not constitute a process change.

Process component means any unit operation or group of units operations or any part of a process or group of parts of a process that are assembled to perform a specific function (*e.g.,* polymerization reactor, dryers, etc.). Process components include equipment, as defined in this section.

Process condenser means a condenser whose primary purpose is to recover material as an integral part of a batch process. All condensers recovering condensate from a batch process at or above the boiling point or all condensers in line prior to a vacuum source are considered process condensers. Typically, a primary condenser or condensers in series are considered to be integral to the batch regulated process if they are capable of and normally used for the purpose of recovering chemicals for fuel value (*i.e.,* net positive heating value), use, reuse or for sale for fuel value, use or reuse. This definition does not apply to a condenser that is used to remove materials that would hinder performance of a downstream recovery device as follows:

(1) To remove water vapor that would cause icing in a downstream condenser.

(2) To remove water vapor that would negatively affect the adsorption capacity of carbon in a downstream carbon adsorber.

(3) To remove high molecular weight organic compounds or other organic compounds that would be difficult to remove during regeneration of a downstream adsorber.

Process tank means a tank or other vessel (*e.g.,* pressure vessel) that is used within an affected source to both: (1) Collect material discharged from a feedstock storage vessel, process tank, or other PVCPU process component, and (2) discharge the material to another process tank, process component, byproduct storage vessel, or product storage vessel.

Process unit means the process components assembled and connected by pipes or ducts to process raw and/or intermediate materials and to manufacture an intended product. For the purpose of this subpart, process unit

includes, but is not limited to, polyvinyl chloride production process.

Process vent means a vent stream that is the result of the manifolding of each and all batch process vent, continuous process vent, or miscellaneous vent resulting from the affected facility into a closed vent system and into a common header that is routed to a control device. The process vent standards apply at the outlet of the control device. A process vent is either a PVC-only process vent or a PVC-combined process vent.

Process wastewater means wastewater that comes into direct contact with HAP or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product containing HAP, but that has not been discharged untreated as wastewater. Examples are product tank drawdown or feed tank drawdown; water formed during a chemical reaction or used as a reactant; water used to wash impurities from organic products or reactants; water used to cool or quench organic vapor streams through direct contact; water discarded from a control device; and condensed steam from jet ejector systems pulling vacuum on vessels containing organics. Gasholder seal water is not process wastewater until it is removed from the gasholder.

Process wastewater treatment system means a specific technique or collection of techniques that remove or destroy the organics in a process wastewater stream to comply with §§ 63.11965, 63.11970, and 63.11975.

Product means a polymer produced using the same monomers and varying in additives (*e.g.,* initiators, terminators, etc.); catalysts; or in the relative proportions of monomers, that is manufactured by a process unit. With respect to polymers, more than one recipe may be used to produce the same product, and there can be more than one grade of a product. Product also means a chemical that is not a polymer, which is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

PVC-combined process vent means a process vent that originates from a PVCPU and is combined with one or more process vents originating from another source category prior to being controlled or emitted to the atmosphere.

PVC-only process vent means a process vent that originates from a PVCPU and is not combined with a process vent originating from another source category prior to being controlled or emitted to the atmosphere.

Recipe means a specific composition from among the range of possible compositions that may occur within a product, as defined in this section. A recipe is determined by the proportions of monomers and, if present, other reactants and additives that are used to make the recipe.

Recovery device means an individual process component capable of and normally used for the purpose of recovering chemicals for fuel value (*i.e.,* net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of process components that may be recovery devices include absorbers, adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers (*e.g.,* wastewater steam and vacuum strippers), or thin-film evaporation units. For purposes of this subpart, recovery devices are control devices.

Repaired, for the purposes of this subpart, means equipment that is adjusted or otherwise altered to eliminate a leak as defined in the applicable sections of this subpart; and unless otherwise specified in applicable provisions of this subpart, is inspected as specified in § 63.11930(f) to verify that emissions from the equipment are below the applicable leak definition.

Resin stripper means a unit that removes organic compounds from a raw polyvinyl chloride and copolymer product. In the production of a polymer, stripping is a discrete step that occurs after the polymerization reaction and before drying or other finishing operations. Examples of types of stripping include steam stripping, vacuum stripping, or other methods of devolatilization. For the purposes of this subpart, devolatilization that occurs in dryers or other finishing operations is not resin stripping. Resin stripping may occur in a polymerization reactor or in a batch or continuous stripper separate from the polymerization reactor where resin stripping occurs.

Root cause analysis means an assessment conducted through a process of investigation to determine the primary cause, and any other significant contributing cause(s), of a discharge of gases in excess of specified thresholds.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Slip gauge means a gauge that has a probe that moves through the gas/liquid interface in a storage vessel and indicates the level of product in the vessel by the physical state of the material the gauge discharges.

Solution process means a process for producing polyvinyl chloride copolymer resin that is characterized by the anhydrous formation of the polymer through precipitation. Polymerization occurs in an organic solvent in the presence of an initiator where vinyl chloride monomer and co-monomers are soluble in the solvent, but the polymer is not. The PVC copolymer is a granule suspended in the solvent, which then precipitates out of solution. Emulsifiers and suspending agents are not used in the solution process. PVC copolymer resins produced using the solution process are referred to as solution resins.

Specific gravity monitoring device means a unit of equipment used to monitor specific gravity and having a minimum accuracy of ±0.02 specific gravity units.

Standard procedure means a formal written procedure officially adopted by the plant owner or operator and available on a routine basis to those persons responsible for carrying out the procedure.

Storage vessel means a tank or other vessel (*e.g.,* pressure vessel) that is part of an affected source and is used to store a gaseous, liquid, or solid feedstock, byproduct, or product that contains organic HAP. Storage vessel does not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Process tanks;

(3) Vessels with capacities smaller than 10,040 gallons;

(4) Vessels storing organic liquids that contain organic HAP only as impurities;

(5) Bottoms receiver tanks;

(6) Surge control vessels; and

(7) Wastewater storage tanks. Wastewater storage tanks are covered under the wastewater provisions.

Stripped resin means the material exiting the resin stripper that contains polymerized vinyl chloride.

Supplemental combustion air means the air that is added to a vent stream after the vent stream leaves the unit operation. Air that is part of the vent stream as a result of the nature of the unit operation is not considered supplemental combustion air. Air required to operate combustion device burner(s) is not considered supplemental combustion air. Air required to ensure the proper operation of catalytic oxidizers, to include the intermittent addition of air upstream of the catalyst bed to maintain a minimum threshold flow rate through the catalyst bed or to avoid excessive temperatures in the catalyst bed, is not considered to be supplemental combustion air.

Surge control vessel means feed drums, recycle drums, and intermediate vessels used as a part of any continuous operation. Surge control vessels are used within an affected source when in-process storage, mixing, or management of flow rates or volumes is needed to introduce material into continuous operations. Surge control vessels also include gasholders.

Suspension blending process means a process for producing polyvinyl chloride resin that is similar to the suspension polymerization process, but employs a rate of agitation that is significantly higher than the highest range for non-blending suspension resins. The suspension blending process uses a recipe that creates extremely small resin particles, generally equal to or less than 100 microns in size, with a glassy surface and very little porosity. The suspension blending process concentrates the resins using a centrifuge that is specifically designed to handle these small particles. Polyvinyl chloride resins produced using the suspension blending process are referred to as suspension blending resins and are typically blended with dispersion resins.

Suspension process means a process for producing polyvinyl chloride resin that is characterized by the formation of the polymers in droplets of liquid vinyl chloride monomer or other co-monomers suspended in water. The droplets are formed by agitation and the use of protective colloids or suspending agents. Initiators used in the suspension process are soluble in vinyl chloride monomer. Polyvinyl chloride resins produced using the suspension process are referred to as suspension resins.

Table 10 HAP means a HAP compound listed in table 10 of this subpart.

Total non-vinyl chloride organic HAP means, for the purposes of this subpart, the sum of the measured concentrations of each HAP, as calculated according to the procedures specified in §§ 63.11960(f) and 63.11980(b).

Type of resin means the broad classification of PVC homopolymer and copolymer resin referring to the basic manufacturing process for producing that resin, including, but not limited to, suspension, dispersion/emulsion, suspension blending, bulk, and solution processes.

Unloading operations means the transfer of organic liquids from a transport vehicle, container, or storage vessel to process components within the affected source.

Wastewater means process wastewater and maintenance wastewater. The following are not considered wastewater for the purposes of this subpart:

(1) Stormwater from segregated sewers;

(2) Water from fire-fighting and deluge systems, including testing of such systems;

(3) Spills;

(4) Water from safety showers;

(5) Samples of a size not greater than reasonably necessary for the method of analysis that is used;

(6) Equipment leaks;

(7) Wastewater drips from procedures such as disconnecting hoses after cleaning lines; and

(8) Noncontact cooling water.

Wastewater stream means a stream that contains only wastewater as defined in this section.

Work practice standard means any design, equipment, work practice or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

TABLE 1 TO SUBPART HHHHHHH OF PART 63—EMISSION LIMITS AND STANDARDS FOR EXISTING AFFECTED SOURCES

For this type of emission point . . .	And for this air pollutant . . .	And for an affected source producing this type of PVC resin . . .	You must meet this emission limit . . .
1. PVC-only process vents [a]	a. Vinyl chloride	All resin types	6.0 parts per million by volume (ppmv).
	b. Total hydrocarbons	All resin types	9.7 ppmv measured as propane.
	c. Total organic HAP [b]	All resin types	56 ppmv.
	d. Hydrogen chloride	All resin types	78 ppmv.
	e. Dioxins/furans (toxic equivalency basis).	All resin types	0.038 nanograms per dry standard cubic meter (ng/dscm).
2. PVC-combined process vents [a]	a. Vinyl chloride	All resin types	1.1 ppmv.
	b. Total hydrocarbons	All resin types	4.2 ppmv measured as propane.
	c. Total organic HAP [b]	All resin types	9.8 ppmv.
	d. Hydrogen chloride	All resin types	380 ppmv.
	e. Dioxins/furans (toxic equivalency basis).	All resin types	0.051 ng/dscm.
3. Stripped resin	a. Vinyl chloride	i. Bulk resin	7.1 parts per million by weight (ppmw).
		ii. Dispersion resin	1300 ppmw.
		iii. Suspension resin	37 ppmw.
		iv. Suspension blending resin	140 ppmw.
		v. Copolymer resin	790 ppmw.
	b. Total non-vinyl chloride organic HAP.	i. Bulk resin	170 ppmw.
		ii. Dispersion resin	240 ppmw.
		iii. Suspension resin	670 ppmw.
		iv. Suspension blending resin	500 ppmw.
		v. Copolymer resin	1900 ppmw.
4. Process Wastewater	a. Vinyl chloride	All resin types	6.8 ppmw.
	b. Total non-vinyl chloride organic HAP.	All resin types	110 ppmw.

[a] Emission limits at 3 percent oxygen, dry basis.
[b] Total organic HAP is alternative compliance limit for THC.

TABLE 2 TO SUBPART HHHHHHH OF PART 63—EMISSION LIMITS AND STANDARDS FOR NEW AFFECTED SOURCES

For this type of emission point . . .	And for this air pollutant . . .	And for an affected source producing this type of PVC resin . . .	You must meet this emission limit . . .
1. PVC-only process vents [a]	a. Vinyl chloride	All resin types	0.56 ppmv.
	b. Total hydrocarbons	All resin types	7.0 ppmv measured as propane.
	c. Total organic HAP [b]	All resin types	5.5 ppmv.
	d. Hydrogen chloride	All resin types	0.17 ppmv.
	e. Dioxins/furans (toxic equivalency basis).	All resin types	0.038 ng/dscm.
2. PVC-combined process vents [a]	a. Vinyl chloride	All resin types	0.56 ppmv.
	b. Total hydrocarbons	All resin types	2.3 ppmv measured as propane.
	c. Total organic HAP [b]	All resin types	5.5 ppmv.
	d. Hydrogen chloride	All resin types	1.4 ppmv.
	e. Dioxins/furans (toxic equivalency basis).	All resin types	0.034 nanograms per dry standard cubic meter (ng/dscm).
3. Stripped resin	a. Vinyl chloride	i. Bulk resin	7.1 parts per million by weight (ppmw).
		ii. Dispersion resin	480 ppmw.
		iii. Suspension resin	7.3 ppmw.
		iv. Suspension blending resin	140 ppmw.
		v. Copolymer—all resin types	790 ppmw.
	b. Total non-vinyl chloride organic HAP.	i. Bulk resin	170 ppmw.
		ii. Dispersion resin	66 ppmw.
		iii. Suspension resin	15 ppmw.
		iv. Suspension blending resin	500 ppmw.
		v. Copolymer resin	1900 ppmw.
4. Process Wastewater	a. Vinyl chloride	All resin types	0.28 ppmw.
	b. Total non-vinyl chloride organic HAP.	All resin types	0.018 ppmw.

[a] Emission limits at 3 percent oxygen, dry basis.
[b] Total organic HAP is alternative compliance limit for THC.

TABLE 3 TO SUBPART HHHHHHH OF PART 63—SUMMARY OF CONTROL REQUIREMENTS FOR STORAGE VESSELS AT NEW AND EXISTING SOURCES

If the storage vessel capacity (gallons) is . . .	And the vapor pressure [a] (psia) is . . .	Then, you must use the following type of storage vessel . . .
≥20,000 but <40,000	≥4	Internal floating roof, external floating roof, or fixed roof vented to a closed vent system and control device achieving 95 percent reduction.[b]
≥40,000	≥0.75	Internal floating roof, external floating roof, or fixed roof vented to a closed vent system and control device achieving 95 percent reduction.[b]
Any capacity.	>11.1	Pressure vessel.[c]
All other capacity and vapor pressure combinations		Fixed roof.[d]

[a] Maximum true vapor pressure of total HAP at storage temperature.
[b] If using a fixed roof storage vessel vented to a closed vent system and control device, you must meet the requirements in § 63.11910(a) for fixed roof storage vessels. If using an internal floating roof storage vessel or external floating roof storage vessels, you must meet the requirements in § 63.11910(b) for internal floating roof storage vessels or external floating roof storage vessels, as applicable.
[c] Meeting the requirements of § 63.11910(c) for pressure vessels.
[d] Meeting the requirements in § 63.11910(a) for fixed roof storage vessels.

TABLE 4 TO SUBPART HHHHHHH OF PART 63—APPLICABILITY OF THE GENERAL PROVISIONS TO PART 63

Citation	Subject	Applies to subpart HHHHHHH	Comment
§ 63.1(a)(1)–(a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
§ 63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	[Reserved]	No.	
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.12005.
§ 63.3	Units and abbreviations	Yes.	
§ 63.4(a)(1), (a)(2), (b), (c)	Prohibited activities and circumvention.	Yes.	
§ 63.4(a)(3)–(a)(5)	[Reserved]	No.	

TABLE 4 TO SUBPART HHHHHHH OF PART 63—APPLICABILITY OF THE GENERAL PROVISIONS TO PART 63—Continued

Citation	Subject	Applies to subpart HHHHHHH	Comment
§ 63.5(a), (b)(1), (b)(3), (b)(4), (b)(6), (d)–(f).	Preconstruction review and notification requirements.	Yes.	
§ 63.5(b)(2), (b)(5), (c)	[Reserved]	No.	
§ 63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1)(iii), (f)(2), (f)(3), (g), (i), (j).	Compliance with standards and maintenance requirements.	Yes	§ 63.11875 specifies compliance dates.
§ 63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(2)(ii), (h)(3), (h)(5)(iv).	[Reserved]	No	
§ 63.6(e)(1)(i), (e)(1)(ii), (e)(3), (f)(1).	Startup, shutdown, and malfunction provisions.	No. See § 63.11890(b) for general duty requirement.	
§ 63.6(h)(1), (h)(2)(i), (h)(2)(iii), (h)(4), (h)(5)(i)–(h)(5)(iii), (h)(5)(v), (h)(6)–(h)(9).	Compliance with opacity and visible emission standards.	No	Subpart HHHHHHH does not specify opacity or visible emission standards.
§ 63.7(a)(1), (a)(2), (a)(3), (a)(4), (b)–(d), (e)(2)–(e)(4), (f), (g)(1), (g)(3), (h).	Performance testing requirements	Yes.	
§ 63.7(a)(2)(i)–(viii)	[Reserved]	No.	
§ 63.7(a)(2)(ix)	Performance testing requirements	Yes.	
§ 63.7(e)(1)	Performance testing	No. See especially § 63.11945, 63.11960(d), 63.11980(a).	
§ 63.7(g)(2)	[Reserved]	No.	
§ 63.8(a)(1), (a)(2), (a)(4), (b), (c)(1)(i), (c)(1)(ii), (c)(2)–(c)(4), (c)(6)–(c)(8).	Monitoring requirements	Yes	Except cross reference in § 63.8(c)(1)(i) to § 63.6(e)(1) is replaced with a cross-reference to § 63.11890(b).
§ 63.8(a)(3)	[Reserved]	No.	
§ 63.8(c)(1)(iii)	Requirement to develop SSM plan for continuous monitoring systems.	No.	
§ 63.8(c)(5)	Continuous opacity monitoring system minimum procedures.	No	Subpart HHHHHHH does not have opacity or visible emission standards.
§ 63.8(d)	Written procedures for continuous monitoring systems.	Yes, except for last sentence, which refers to an SSM plan. SSM plans are not required.	
§ 63.8(e)	Continuous monitoring systems performance evaluation.	Yes.	
§ 63.8(f)	Use of an alternative monitoring method.	Yes.	
§ 63.8(g)	Reduction of monitoring data	Yes	Except that the minimum data collection requirements are specified in § 63.11935(e).
§ 63.9(a), (b)(1), (b)(2), (b)(4)(i), (b)(4)(v), (b)(5), (c)–(e), (g)(1), (g)(3), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j).	Notification requirements	Yes.	
§ 63.9(f)	Notification of opacity and visible emission observations.	No	Subpart HHHHHHH does not have opacity or visible emission standards.
§ 63.9(g)(2)	Use of continuous opacity monitoring system data.	No	Subpart HHHHHHH does not require the use of continuous opacity monitoring system.
§ 63.9(b)(3), (b)(4)(ii)–(iv), (h)(4)	[Reserved]	No.	
§ 63.10(a), (b)(1)	Recordkeeping and reporting requirements.	Yes.	
§ 63.10(b)(2)(i)	Recordkeeping of occurrence and duration of startups and shutdowns.	No.	
§ 63.10(b)(2)(ii)	Recordkeeping of malfunctions	No. See §§ 63.11895(b), 63.11985(b)(4)(i), 63.11985(b)(9) through (11), and 63.11985(c)(7).	
§ 63.10(b)(2)(iii)	Maintenance records	Yes.	
§ 63.10(b)(2)(iv), (b)(2)(v)	Actions taken to minimize emissions during SSM.	No.	
§ 63.10(b)(2)(vi)	Recordkeeping for CMS malfunctions.	Yes.	
§ 63.10(b)(2)(vii)–(x)	Other CMS requirements	Yes.	
§ 63.10(b)(2)(xi)–(xiv)	Other recordkeeping requirements	Yes.	
§ 63.10(b)(3)	Recordkeeping requirement for applicability determinations.	Yes.	

TABLE 4 TO SUBPART HHHHHHH OF PART 63—APPLICABILITY OF THE GENERAL PROVISIONS TO PART 63—Continued

Citation	Subject	Applies to subpart HHHHHHH	Comment
§63.10(c)(1), (c)(5), (c)(6)	Additional recordkeeping requirements for sources with continuous monitoring systems.	Yes.	
§63.10(c)(2)–(4), (c)(9)	[Reserved]	No.	
§63.10(c)(7)	Additional recordkeeping requirements for CMS—identifying exceedances and excess emissions during SSM.	Yes.	
§63.10(c)(8)	Additional recordkeeping requirements for CMS—identifying exceedances and excess emissions.	Yes.	
§63.10(c)(10)	Recording nature and cause of malfunctions.	No. See §§63.11895(b), 63.11985(b)(4)(i), 63.11985(b)(9) through (11), and 63.11985(c)(7).	
63.10(c)(11), (c)(12)	Recording corrective actions	No. See §§63.11895(b), 63.11985(b)(4)(i), 63.11985(b)(9) through (11), and 63.11985(c)(7).	
§63.10(c)(13)–(14)	Records of the total process operating time during the reporting period and procedures that are part of the continuous monitoring system quality control program.	Yes.	
§63.10(c)(15)	Use SSM plan	No.	
§63.10(d)(1)	General reporting requirements	Yes.	
§63.10(d)(2)	Performance test results	Yes.	
§63.10(d)(3)	Opacity or visible emissions observations.	No	Subpart HHHHHHH does not specify opacity or visible emission standards.
§63.10(d)(4)	Progress reports	Yes.	
§63.10(d)(5)	SSM reports	No. See §§63.11895(b), 63.11985(b)(4)(i), 63.11985(b)(9) through (11), and 63.11985(c)(7).	
§63.10(e)(1)	Additional continuous monitoring system reports—general.	Yes.	
§63.10(e)(2)(i)	Results of continuous monitoring system performance evaluations.	Yes.	
§63.10(e)(2)(ii)	Results of continuous opacity monitoring system performance evaluations.	No	Subpart HHHHHHH does not require the use of continuous opacity monitoring system.
§63.10(e)(3)	Excess emissions/continuous monitoring system performance reports.	Yes.	
§63.10(e)(4)	Continuous opacity monitoring system data reports.	No	Subpart HHHHHHH does not require the use of continuous opacity monitoring system.
§63.10(f)	Recordkeeping/reporting waiver	Yes.	
63.11(a)	Control device and work practice requirements—applicability.	Yes.	
§63.11(b)	Flares	No	Facilities subject to subpart HHHHHHH do not use flares as control devices, as specified in §63.11925(b).
§63.11(c)–(e)	Alternative work practice for monitoring equipment for leaks.	Yes.	
§63.12	State authority and delegations	Yes	§63.12000 identifies types of approval authority that are not delegated.
§63.13	Addresses	Yes.	
§63.14	Incorporations by reference	Yes	Subpart HHHHHHH incorporates material by reference.
§63.15	Availability of information and confidentiality.	Yes.	
§63.16	Performance track provisions	Yes.	

TABLE 5 TO SUBPART HHHHHHH OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDING AND COMPLIANCE FREQUENCIES FOR PROCESS VENTS

For these control devices, you must monitor these operating parameters . . .	Establish the following operating limit during your initial performance test . . .	Monitor, record, and demonstrate continuous compliance using these minimum frequencies		
		Data measurement	Data recording	Data averaging period for compliance
Process Vents				
Any Control device				
Flow to/from the control device.	N/A	Continuous	N/A	Date and time of flow start and stop.
Thermal Oxidizers				
Temperature (in fire box or downstream ductwork prior to heat exchange).	Minimum temperature	Continuous	Every 15 minutes	3-hour block average.
Temperature differential across catalyst bed.	Minimum temperature differential.	Continuous	Every 15 minutes	3-hour block average.
Inlet temperature to catalyst bed and catalyst condition.	Minimum inlet temperature and catalyst condition as specified in 63.11940 (b)(3).	Continuous for temperature, annual for catalyst condition.	Every 15 minutes for temperature, annual for catalyst condition.	3-hour block average for temperature, annual for catalyst condition.
Absorbers and Acid Gas Scrubbers				
Influent liquid flow	Minimum inlet liquid flow	Continuous	Every 15 minutes	3-hour block average.
Influent liquid flow and gas stream flow.	Minimum influent liquid flow to gas stream flow ratio.	Continuous	Every 15 minutes	3-hour block average.
Pressure drop	Minimum pressure drop	Continuous	Every 15 minutes	3-hour block average.
Exhaust gas temperature	Maximum exhaust gas temperature.	Continuous	Every 15 minutes	3-hour block average.
Change in specific gravity of scrubber liquid.	Minimum change in specific gravity.	Continuous	Every 15 minutes	3-hour block average.
pH of effluent liquid	Minimum pH	Continuous	Every 15 minutes	3-hour block average.
Causticity of effluent liquid	Minimum causticity	Continuous	Every 15 minutes	3-hour block average.
Conductivity of effluent liquid.	Minimum conductivity	Continuous	Every 15 minutes	3-hour block average.
Regenerative Adsorber				
Regeneration stream flow.	Minimum total flow per regeneration cycle.	Continuous	N/A	Total flow for each regeneration cycle.
Adsorber bed temperature.	Maximum temperature	Continuously after regeneration and within 15 minutes of completing any temperature regulation.	Every 15 minutes after regeneration and within 15 minutes of completing any temperature regulation.	3-hour block average.
Adsorber bed temperature.	Minimum temperature	Continuously during regeneration except during any temperature regulating portion of the regeneration cycle.	N/A	Average of regeneration cycle.
Vacuum and duratio of regeneration.	Minimum vacuum and period of time for regeneration.	Continuous	N/A	Average vacuum and duration of regeneration.
Regeneration frequency	Minimum regeneration frequency and duration.	Continuous	N/A	Date and time of regeneration start and stop.
Adsorber operation valve sequencing and cycle time.	Correct valve sequencing and minimum cycle time.	Daily	Daily	N/A.
Non-Regenerative Adsorber				
Average adsorber bed life.	N/A	Daily until breakthrough for 3 adsorber bed changeouts.	N/A	N/A.

TABLE 5 TO SUBPART HHHHHHH OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDING AND COMPLIANCE FREQUENCIES FOR PROCESS VENTS—Continued

For these control devices, you must monitor these operating parameters . . .	Establish the following operating limit during your initial performance test . . .	Monitor, record, and demonstrate continuous compliance using these minimum frequencies		
		Data measurement	Data recording	Data averaging period for compliance
Outlet VOC concentration of the first adsorber bed in series.	Limits in Table 1 or 2 of this subpart.	Daily, except monthly (if more than 2 months bed life remaining) or weekly (if more than 2 weeks bed life remaining).	N/A	Daily, weekly, or monthly.
Condenser				
Temperature	Maximum outlet temperature.	Continuous	Every 15 minutes	3-hour block average.

TABLE 6 TO SUBPART HHHHHHH OF PART 63—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorodibenzo-p-dioxin	1
1,2,3,7,8-pentachlorodibenzo-p-dioxin	1
1,2,3,4,7,8-hexachlorodibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorodibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorodibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorodibenzo-p-dioxin	0.01
octachlorodibenzo-p-dioxin	0.0003
2,3,7,8-tetrachlorodibenzofuran	0.1
2,3,4,7,8-pentachlorodibenzofuran	0.3
1,2,3,7,8-pentachlorodibenzofuran	0.03
1,2,3,4,7,8-hexachlorodibenzofuran	0.1
1,2,3,6,7,8-hexachlorodibenzofuran	0.1
1,2,3,7,8,9-hexachlorodibenzofuran	0.1
2,3,4,6,7,8-hexachlorodibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorodibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorodibenzofuran	0.01
Octachlorodibenzofuran	0.0003

TABLE 7 TO SUBPART HHHHHHH OF PART 63—CALIBRATION AND ACCURACY REQUIREMENTS FOR CONTINUOUS PARAMETER MONITORING SYSTEMS

If you monitor this parameter . . .	Then your accuracy requirements are . . .	And your inspection/calibration frequency requirements are . . .
1. Temperature (non-cryogenic temperature ranges).	±1 percent of temperature measured or 2.8 degrees Celsius (5 degrees Fahrenheit) whichever is greater.	Every 12 months.
2. Temperature (cryogenic temperature ranges).	±2.5 percent of temperature measured or 2.8 degrees Celsius (5 degrees Fahrenheit) whichever is greater.	Every 12 months.
3. Liquid flow rate	±2 percent of the normal range of flow	a. Every 12 months. b. You must select a measurement location where swirling flow or abnormal velocity distributions due to upstream and downstream disturbances at the point of measurement do not exist.
4. Gas flow rate	±5 percent of the flow rate or 10 cubic feet per minute, whichever is greater.	a. Every 12 months. b. Check all mechanical connections for leakage at least annually. c. At least annually, conduct a visual inspection of all components of the flow CPMS for physical and operational integrity and all electrical connections for oxidation and galvanic corrosion if your flow CPMS is not equipped with a redundant flow sensor.
5. pH or caustic strength	±0.2 pH units	Every 8 hours of process operation check the pH or caustic strength meter's calibration on at least two points.

TABLE 7 TO SUBPART HHHHHHH OF PART 63—CALIBRATION AND ACCURACY REQUIREMENTS FOR CONTINUOUS PARAMETER MONITORING SYSTEMS—Continued

If you monitor this parameter . . .	Then your accuracy requirements are . . .	And your inspection/calibration frequency requirements are . . .
6. Conductivity	±5 percent of normal range	Every 12 months.
7. Mass flow rate	±5 percent of normal range	Every 12 months.
8. Pressure	±5 percent or 0.12 kilopascals (0.5 inches of water column) whichever is greater.	a. Calibration is required every 12 months. b. Check all mechanical connections for leakage at least annually. c. At least annually perform a visual inspection of all components for integrity, oxidation and galvanic corrosion if CPMS is not equipped with a redundant pressure sensor.

TABLE 8 TO SUBPART HHHHHHH OF PART 63—METHODS AND PROCEDURES FOR CONDUCTING PERFORMANCE TESTS FOR PROCESS VENTS

For each control device used to meet the emission limit in Table 1 or 2 to this subpart for the following pollutant . . .	You must . . .	Using . . .
1. Total hydrocarbons	a. Measure the total hydrocarbon concentration at the outlet of the final control device or in the stack.	Method 25A at 40 CFR part 60, appendix A–7. Conduct each test run for a minimum of 1 hour.
2. Total organic HAP	a. Measure the total organic HAP concentration at the outlet of the final control device or in the stack.	i. Method 18 at 40 CFR part 60, appendix A–6 and ASTM D6420–99.[a] Conduct each test run for a minimum of 1 hour. ii. Method 320 at 40 CFR part 63, appendix A and ASTM D6348–03.[a] Conduct each test run for a minimum of 1 hour.
3. Vinyl chloride	a. Measure the vinyl chloride concentration at the outlet of the final control device or in the stack.	Method 18 at 40 CFR part 60, appendix A–6. Conduct each test run for a minimum of 1 hour.
4. Hydrogen chloride	a. Measure hydrogen chloride concentrations at the outlet of the final control device or in the stack.	i. Method 26 at 40 CFR part 60, appendix A–8, collect 60 dry standard liters of gas per test run; or ii. Method 26A at 40 CFR part 60, appendix A–8, collect 1 dry standard cubic meter of gas per test run.
5. Dioxin/furan	a. Measure dioxin/furan concentrations on a toxic equivalency basis (and report total mass per isomer) at the outlet of the final control device or in the stack.	Method 23 at 40 CFR part 60, appendix A–7 and collect 5 dry standard cubic meters of gas per test run.
6. Any pollutant from a continuous, batch, or combination of continuous and batch process vent(s).	a. Select sampling port locations and the number of traverse points.	Method 1 or 1A at 40 CFR part 60, appendix A–1.
	b. Determine gas velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G at 40 CFR part 60, appendix A–1 and A–2.
	c. Conduct gas molecular weight analysis and correct concentrations the specified percent oxygen in Table 1 or 2 to this subpart.	Method 3, 3A, or 3B at 40 CFR part 60, appendix A–2 using the same sampling site and time as HAP samples.
	d. Measure gas moisture content	Method 4 at 40 CFR part 60, appendix A–3.

[a] Incorporated by reference, see § 63.14.

TABLE 9 TO SUBPART HHHHHHH OF PART 63—PROCEDURES FOR CONDUCTING SAMPLING OF STRIPPED RESIN AND PROCESS WASTEWATER

For demonstrating . . .	For the following emission points and types of processes . . .	Collect samples according to the following schedule . . .	
		Vinyl chloride . . .	Total non-vinyl chloride organic HAP . . .
Each stripped resin stream			
1. Initial compliance	a. Continuous	Every 8 hours or for each grade, whichever is more frequent during a 24 hour period.	Every 8 hours or for each grade, whichever is more frequent during a 24 hour period.
	b. Batch	1 grab sample for each batch produced during a 24 hour period.	1 grab sample for each batch produced during a 24 hour period.

TABLE 9 TO SUBPART HHHHHHH OF PART 63—PROCEDURES FOR CONDUCTING SAMPLING OF STRIPPED RESIN AND PROCESS WASTEWATER—Continued

For demonstrating . . .	For the following emission points and types of processes . . .	Collect samples according to the following schedule . . .	
		Vinyl chloride . . .	Total non-vinyl chloride organic HAP . . .
2. Continuous compliance	a. Continuous	On a daily basis, 1 grab sample every 8 hours or for each grade, whichever is more frequent during a 24 hour period.	On a monthly basis, 1 grab sample every 8 hours or for each grade, whichever is more frequent during a 24 hour period.
	b. Batch	On a daily basis, 1 grab sample for each batch produced during a 24 hour period.	On a monthly basis, 1 grab sample for each batch produced during a 24 hour period.
Each process wastewater stream			
3. Initial compliance	N/A	1 grab sample	1 grab sample.
4. Continuous compliance	N/A	1 grab sample per month	1 grab sample per month.

TABLE 10 TO SUBPART HHHHHHH OF PART 63—HAP SUBJECT TO THE RESIN AND PROCESS WASTEWATER PROVISIONS AT NEW AND EXISTING SOURCES

CAS No.	HAP	Analyte category	Test method
107211	Ethylene glycol	Alcohol	SW–846–8015C.[a]
67561	Methanol	Alcohol	SW–846–8015C.[a]
75070	Acetaldehyde	Aldehyde	SW–846–8315A.[a]
50000	Formaldehyde	Aldehyde	SW–846–8315A.[a]
51285	2,4-dinitrophenol	SVOC	SW–846–8270D.[a]
98862	Acetophenone	SVOC	SW–846–8270D.[a]
117817	Bis(2-ethylhexyl) phthalate (DEHP)	SVOC	SW–846–8270D.[a]
123319	Hydroquinone	SVOC	SW–846–8270D.[a]
108952	Phenol	SVOC	SW–846–8270D.[a]
79345	1,1,2,2-tetrachloroethane	VOC	SW–846–8260B.[a]
106990	1,3-butadiene	VOC	SW–846–8260B.[a]
540841	2,2,4-trimethylpentane	VOC	SW–846–8260B.[a]
71432	Benzene	VOC	SW–846–8260B.[a]
108907	Chlorobenzene	VOC	SW–846–8260B.[a]
67663	Chloroform	VOC	SW–846–8260B.[a]
126998	Chloroprene	VOC	SW–846–8260B.[a]
98828	Cumene	VOC	SW–846–8260B.[a]
75003	Ethyl chloride (Chloroethane)	VOC	SW–846–8260B.[a]
100414	Ethylbenzene	VOC	SW–846–8260B.[a]
107062	Ethylene dichloride (1,2-Dichloroethane)	VOC	SW–846–8260B.[a]
75343	Ethylidene dichloride (1,1-Dichloroethane)	VOC	SW–846–8260B.[a]
74873	Methyl chloride (Chloromethane)	VOC	SW–846–8260B.[a]
75092	Methylene chloride	VOC	SW–846–8260B.[a]
110543	n-Hexane	VOC	SW–846–8260B.[a]
108883	Toluene	VOC	SW–846–8260B.[a]
71556/79005	Trichloroethane	VOC	SW–846–8260B.[a]
108054	Vinyl acetate	VOC	SW–846–8260B.[a]
593602	Vinyl bromide	VOC	SW–846–8260B.[a]
75014	Vinyl chloride	VOC	Method 107 at 40 CFR part 61, appendix B.
75354	Vinylidene chloride (1,1-Dichloroethylene)	VOC	SW–846–8260B.[a]
1330207	Xylenes (isomers and mixtures)	VOC	SW–846–8260B.[a]

[a] Incorporated by reference, see § 63.14.

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Part III

Department of Health and Human Services

45 CFR Part 162
Administrative Simplification: Adoption of a Standard for a Unique Health Plan Identifier; Addition to the National Provider Identifier Requirements; and a Change to the Compliance Date for ICD–10–CM and ICD–10–PCS Medical Data Code Sets; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 162

[CMS–0040–P]

RIN 0938–AQ13

Administrative Simplification: Adoption of a Standard for a Unique Health Plan Identifier; Addition to the National Provider Identifier Requirements; and a Change to the Compliance Date for ICD–10–CM and ICD–10–PCS Medical Data Code Sets

AGENCY: Office of the Secretary, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 1104 of the Patient Protection and Affordable Care Act (hereinafter referred to as the Affordable Care Act) by establishing new requirements for administrative transactions that would improve the utility of the existing Health Insurance Portability and Accountability Act of 1996 (HIPAA) transactions and reduce administrative burden and costs. It proposes the adoption of the standard for a national unique health plan identifier (HPID) and requirements or provisions for the implementation of the HPID. This rule also proposes the adoption of a data element that will serve as an other entity identifier (OEID), an identifier for entities that are not health plans, health care providers, or ''individuals,'' that need to be identified in standard transactions. This proposed rule would also specify the circumstances under which an organization covered health care provider must require certain noncovered individual health care providers who are prescribers to obtain and disclose an NPI. Finally, this rule proposes to change the compliance date for the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM) for diagnosis coding, including the Official ICD–10–CM Guidelines for Coding and Reporting, and the International Classification of Diseases, 10th Revision, Procedure Coding System (ICD–10–PCS) for inpatient hospital procedure coding, including the Official ICD–10–PCS Guidelines for Coding and Reporting, from October 1, 2013 to October 1, 2014.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided, no later than 5 p.m. on May 17, 2012.

ADDRESSES: In commenting, please refer to file code CMS–0040–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0040–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0040–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–1066 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kari Gaare (410) 786–8612, Matthew Albright (410) 786–2546, and Denise Buenning (410) 786–6711.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call 1–800–743–3951.

I. Executive Summary and Background

A. Executive Summary

1. Purpose of the Regulatory Action

a. Need for the Regulatory Action

This rule proposes the adoption of a standard unique health plan identifier (HPID) and the adoption of a data element that will serve as an other entity identifier (OEID). This rule also proposes an addition to the National Provider Identifier (NPI) requirements. Finally, this rule proposes to change the compliance date for the ICD–10–CM and ICD–10–PCS medical data code sets (hereinafter ''code sets'') from October 1, 2013 to October 1, 2014.

(1) HPID

Currently, health plans and other entities that perform health plan functions, such as third party administrators and clearinghouses, are identified in Health Insurance Portability and Affordability Act of 1996 (HIPAA) standard transactions with multiple identifiers that differ in length and format. Covered health care providers are frustrated by various problems associated with the lack of a

standard identifier, such as: improper routing of transactions; rejected transactions due to insurance identification errors; difficulty in determining patient eligibility; and challenges resulting from errors in identifying the correct health plan during claims processing.

The adoption of the HPID and the OEID will increase standardization within HIPAA standard transactions and provide a platform for other regulatory and industry initiatives. Their adoption will allow for a higher level of automation for health care provider offices, particularly for provider processing of billing and insurance related tasks, eligibility responses from the health plans, and remittance advice that describes health care claim payments.

(2) NPI

In January 2004, the U.S. Department of Health and Human Services (HHS) published a final rule establishing the standard for a unique health identifier for health care providers for use in the health care system and adopting the National Provider Identifier (NPI) as that standard. The rule also established the implementation specifications for obtaining and using the standard unique health identifier for health care providers. Since that time, pharmacies have encountered situations where they need to include the NPI of a prescribing health care provider in a pharmacy claim, but where the prescribing health care provider has been a noncovered health care provider who did not have an NPI because he or she was not required to obtain one. This situation has become particularly problematic in the Medicare Part D program. The proposed addition to the NPI requirements seeks to address this issue.

(3) ICD–10–CM and ICD–10–PCS Code Sets.

On January 16, 2009, HHS published a final rule (74 FR 3328) in which the Secretary of HHS (the Secretary) adopted the ICD–10–CM and ICD–10–PCS (ICD–10) code sets as the HIPAA standards to replace the previously adopted International Classification of Diseases, 9th Revision, Clinical Modification, Volumes 1 and 2, including the Official ICD–9–CM Guidelines for Coding and Reporting (ICD–9–CM Volumes 1 and 2) and the International Classification of Diseases, 9th Revision, Clinical Modification, Volume 3, including the Official ICD–9–CM Guidelines for Coding and Reporting (ICD–9–CM Volume 3) for diagnosis and procedure codes, respectively. The compliance date set by the final rule was October 1, 2013.

Since that time, some provider groups have expressed strong concern about their ability to meet the October 1, 2013 compliance date and the serious claims payment issues that might then ensue. Some providers' concerns about being able to meet the ICD–10 compliance date are based, in part, on difficulties they have had meeting HHS' compliance deadline for the adopted Associated Standard Committee's (ASC) X12 Version 5010 standards (Version 5010) for electronic health care transactions. Compliance with Version 5010 and ICD–10 by all covered entities is essential to a smooth transition to the updated medical data code sets, as the failure of any one industry segment to achieve compliance would negatively impact all other industry segments and result in returned claims and provider payment delays. We believe the change in the compliance date for ICD–10, as proposed in this rule, would give providers and other covered entities more time to prepare and fully test their systems to ensure a smooth and coordinated transition by all industry segments.

b. Legal Authority for the Regulatory Action

(1) HPID

This proposed rule implements section 1104(c) of the Affordable Care Act and section 1173(b)(1) of the Social Security Act (the Act) which require the adoption of a standard unique health plan identifier (HPID).

(2) NPI

This proposed rule would impose an additional requirement on covered organization health care providers under the authority of sections 1173(b)(1) and 1175(b) of the Act. It would also accommodate the needs of certain types of health care providers in the use of the covered transactions, as required by section 1173(a)(3) of the Act.

(3) ICD–10–CM and ICD–10–PCS

This proposed rule would set a new compliance date for the ICD–10 code sets, in accordance with section 1175(b)(2) of the Act, under which the Secretary determines the date by which covered entities must comply with modified standards and implementation specifications.

2. Summary of the Major Provisions

a. HPID

This rule proposes the adoption of the HPID as the standard for the unique identifier for health plans and definitions for ''Controlling Health Plan'' and ''Subhealth Plan.'' The proposed definitions of these two terms seek to differentiate between health plan entities that would be required to obtain an HPID, and those that would be eligible, but not required, to obtain an HPID. This rule also proposes to require all covered entities to use an HPID whenever a covered entity identifies a health plan in a covered transaction. Because health plans today have many different business structures and arrangements that affect how health plans are identified in standard transactions, these two proposed definitions also seek to enable health plans to obtain HPIDs to reflect differing business arrangements so they can be identified appropriately in standard transactions.

This rule also proposes the adoption of a data element that would serve as an other entity identifier (OEID). The OEID would serve as an identifier for entities that are not health plans, health care providers, or ''individuals'' (as defined in 45 CFR 160.103), but that need to be identified in standard transactions (including, for example, third party administrators, transaction vendors, clearinghouses, and other payers). Under this proposed rule, these other entities would not be required to obtain an OEID, but they could obtain and use one if they needed to be identified in covered transactions. Because other entities are identified in standard transactions in a similar manner as health plans, we believe that establishing a data element to serve as an identifier for these entities will increase efficiency by encouraging the use of a uniform identifier.

The most significant benefit of the HPID and the OEID is that they will increase standardization within HIPAA standard transactions by establishing uniform identifiers.

b. NPI

This rule proposes that an organization covered health care provider require certain noncovered individual health care providers who are prescribers to: (1) Obtain NPIs and; (2) to the extent the prescribers write prescriptions while acting within the scope of the prescribers' relationship with the organization, disclose them to any entity that needs the NPIs to identify the prescribers in standard transactions. This addition to the NPI requirements would address the issue that pharmacies are encountering when the NPI of a prescribing health care provider needs to be included on a pharmacy claim, but the prescribing

health care provider does not have, or has not disclosed an NPI.

c. ICD–10–CM and ICD–10–PCS

This rule proposes that the compliance date for ICD–10–CM and ICD–10–PCS be changed from October 1, 2013 to October 1, 2014. We believe this change will give covered entities the additional time needed to synchronize system and business process preparation and changeover to the updated medical data code sets.

3. Costs and Benefits

a. HPID

The HPID is expected to yield the most benefit for providers, while health plans will bear most of the costs. Costs to all commercial and government health plans together (Medicare, Medicaid programs, IHS, VHA) are estimated to be $650 million to $1.3 billion. However, commercial and government health plans are expected to make up those costs in savings. Further, it is our understanding that the industry will not find that the HPID is overly burdensome. Many entities have indicated that they have delayed regular system updates and maintenance, as well as the issuance or adoption of new health plan identification cards, to accommodate the adoption of the HPID.

Health care providers can expect savings from two indirect consequences of HPID implementation: (1) The cost avoidance of decreased administrative time spent by providers interacting with health plans; and (2) a material cost savings through automation of processes for every transaction that moves from manual to electronic implementation. HPID's anticipated 10-year return on investment for the entire health care industry is expected to be between $1 to $4.6 billion. (This estimate includes savings resulting from the foundational effect of the HPID rather than a precise budgetary prediction.)

b. NPI

The addition to the requirements for the NPI would have little impact on health care providers and on the health industry at large because few health care providers do not already have an NPI. In addition, covered organization health care providers may comply by various means. For example, a covered organization could use a simple verbal directive to prescribers whom they employ or contract with to meet the requirements. Alternately, a covered organization could update employment or contracting agreements with the prescribers. For these reasons, we believe the additional NPI requirements do not impose spending costs on State government or the private sector in any 1-year of $136 million or more.

c. Change of Compliance Date of ICD–10

According to a recent survey conducted by CMS, up to one quarter of health care providers believe they will not be ready for the October 1, 2013 compliance date.[1] While the survey found no significant differences among practice settings regarding the likelihood of achieving compliance before the deadline, based on recent industry feedback we believe that larger health care health plans and providers generally are more prepared than smaller entities. The uncertainty about provider readiness is confirmed in another recent readiness survey in which nearly 50 percent of the 2,140 provider respondents did not know when they would complete their impact assessment of the ICD–10 transition.[2]

By delaying the compliance date of ICD–10 from October 1, 2013 to October 1, 2014, we would be allowing more time for covered entities to prepare for the transition to ICD–10 and to conduct thorough testing. By allowing more time to prepare, covered entities may be able to avoid costly obstacles that would otherwise emerge while in production.

Savings would come from the avoidance of costs that would occur as a consequence of significant numbers of providers being unprepared for the transition to ICD–10. In the Regulatory Impact Analysis (RIA) of this proposed rule, we estimate that there would be a cost avoidance of approximately $3.6 to nearly $8 billion in this regard. This range of estimates reflects the avoidance of two costly consequences that may occur should the compliance date remain October 1, 2013: (1) Both health care providers and health plans may have to process health care claims manually in order for claims to be paid; and (2) small health care providers may have to take out loans or apply for lines of credit in order to continue to provide health care in the face of delayed payments.

In terms of costs, commercial health plans, medium and large hospitals, and large physician practices are far along in their ICD–10 implementation planning, and therefore have devoted funds, resources, and staff to the effort. According to our estimates, a 1-year delay of the ICD–10 compliance date would add 10 to 30 percent to the total cost that these entities have already spent or budgeted for the transition—an additional cost to commercial entities of approximately $1 to $6.4 billion. Medicare and State Medicaid Agencies have also reported estimates of costs of a change in the compliance date in recent informal polls. Accordingly, the calculations in the RIA in this proposed rule demonstrate that a 1-year delay in the compliance date of ICD–10 would cost the entire health care industry approximately $1 billion to $6.5 billion.

We assume that the costs and cost avoidance calculated in the RIA will be incurred roughly over a 6- to 12-month period, from October 1, 2013 to October 1, 2014. For simplicity sake, however, both the costs and the cost avoidance that result from a change in the compliance date of ICD–10 are calculated over the calendar year, 2014.

We solicit comments on our assumptions and conclusions as described in the RIA.

B. Introduction

The following discussion presents a partial statutory and regulatory history related only to the statutory provisions and regulations that are relevant for purposes of this proposed rule. For additional statutory background and regulatory history, see the proposed rule entitled ''Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards,'' published in the **Federal Register** on August 22, 2008 (73 FR 49742); ''HIPAA Administrative Simplification: Modification to Medical Data Code Set Standards To Adopt ICD–10–CM and ICD–10–PCS: Proposed Rule,'' published in the **Federal Register** on August 22, 2008 (73 FR 49796) (hereinafter referred to as the ICD–10 proposed rule); and ''HIPAA Administrative Simplification: Modification to Medical Data Code Set Standards To Adopt ICD–10–CM and ICD–10–PCS,'' published in the **Federal Register** on January 16, 2009 (74 FR 3328) (hereinafter referred to as the ICD–10 final rule).

The Congress addressed the need for a consistent framework for electronic health care transactions and other administrative simplification issues through the Health Insurance Portability

[1] ''Version 5010 and ICD–10 Readiness Assessment: Conducted among health Care providers, payers and Vendors for the Centers for Medicare & Medicaid Services (CMS), December 2011 (OMB Approval No: 09938–1149). The assessment surveyed 404 providers, 101 payers, and 90 vendors, which represents 0.1% of all physician practices, 3% of hospitals, and 5% of health plans.

[2] An impact assessment for ICD–10 is performed by a covered entity to determine business areas, policies, processes and systems, and trading partners that will be affected by the transition to ICD–10. An impact assessment is a tool to aid in planning for implementation. ''Survey: ICD–10 Brief Progress,'' February 2012, conducted by the Workgroup for Electronic Data Interchange (WEDI).

and Accountability Act of 1996 (HIPAA), (Pub. L. 104–191), enacted on August 21, 1996. HIPAA amended the Act by adding Part C–Administrative Simplification—to Title XI of the Act requiring the Secretary to adopt standards for certain electronic transactions to enable health information to be exchanged more efficiently and to achieve greater uniformity in the transmission of health information exchange.

In the August 17, 2000 **Federal Register** (65 FR 50312), we published a final rule entitled ''Health Insurance Reform: Standards for Electronic Transactions'' (hereinafter referred to as the Transactions and Code Sets final rule). That rule implemented some of the HIPAA Administrative Simplification requirements by adopting standards developed by standard development organizations (SDOs) for certain electronic health care transactions and medical code sets to be used in those transactions. We adopted the Accredited Standards Committee (ASC) X12 standards Version 4010/4010A1 and the National Council for Prescription Drug Programs (NCPDP) Telecommunication standard Version 5.1, which is specified at 45 CFR part 162, subparts K through R. All health plans, health care clearinghouses, and health care providers that transmit health information in electronic form in connection with a covered transaction (referred to as covered entities) are required to comply with these adopted standards.

In the January 16, 2009 **Federal Register** (74 FR 3296), we published a final rule entitled, ''Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards'' (the Modifications final rule), that, among other things, adopted updated versions of the standards for the electronic health care transactions for which the Department originally adopted standards in the Transactions and Code Sets final rule. These updated standards for electronic health care transactions included ASC X12 Version 5010 and NCPDP Telecommunication Standard Implementation Guide, Version D. Release 0 (Version D.0), and equivalent Batch Standard Implementation Guide, Version 1, Release 2 (Version 1.2). In the Modifications final rule, the Department also adopted the Medicaid pharmacy subrogation transaction, a new standard—the Batch Standard Medicaid Subrogation Implementation Guide, Version 3, Release 0). Covered entities are required to conduct as standard transactions all electronic transactions for which the Secretary has adopted a standard. From March 17, 2009 through December 31, 2011, covered entities were required to comply either with the ASC X12 Version 4010/4010A1 and NCPDP Telecommunications standard Version 5.1 standards or the updated Version 5010 and NCPDP D.0 standards. Effective January 1, 2012, covered entities were required to comply with Version 5010 and NCPDP D.0, and (except for small health plans) the Version 3.0 standard for Medicaid pharmacy subrogation transactions. Small health plans must comply with Version 3.0 on or after January 1, 2013.

Also on January 16, 2009, we published a final rule entitled ''HIPAA Administrative Simplification: Modification to Medical Data Code Set Standards to Adopt ICD–10–CM and ICD–10–PCS'' (74 FR 3328). In the ICD–10 final rule, we adopted the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM), including the Official ICD–10–CM Guidelines for Coding and Reporting, as maintained and distributed by HHS, for the following conditions: (1) diseases; (2) injuries; (3) impairments; (4) other health problems and their manifestations; and (5) causes of injury, disease, impairment, or other health problems. We also adopted the International Classification of Diseases, 10th Revision, Procedure Coding System (ICD–10–PCS), including the Official ICD–10–PCS Guidelines for Coding and Reporting, as maintained and distributed by HHS, for the following procedures or other actions taken for diseases, injuries, and impairments of hospital inpatients reported by hospitals: (1) prevention; (2) diagnosis; (3) treatment; and (4) management.

Table 1 summarizes the full set of transaction standards adopted in the Transactions and Code Sets final rule and as modified in the Modifications final rule. The table uses abbreviations of the standards and the names by which the transactions are commonly referred, while the official nomenclature and titles of the standards and transactions related to the provisions of this proposed rule are provided later in this preamble.

TABLE 1—TRANSACTIONS STANDARDS ADOPTED UNDER HIPAA

Standard	Transaction
ASC X12 837 D.	Health care claims—Dental.
ASC X12 837 P.	Health care claims—Professional.
ASC X12 837 I	Health care claims—Institutional.
NCPDP D.0 and Version 1.2.	Health care claims—Retail pharmacy drug.
ASC X12 837 P and NCPDP D.0 and Version 1.2.	Health care claims—Retail pharmacy supplies and professional services.
NCPDP D.0 and Version 1.2.	Coordination of Benefits—Retail pharmacy drug.
ASC X12 837 D.	Coordination of Benefits—Dental.
ASC X12 837 P.	Coordination of Benefits—Professional.
ASC X12 837 I	Coordination of Benefits—Institutional.
ASC X12 270/271.	Eligibility for a health plan (request and response)—Dental, professional, and institutional.
NCPDP D.0	Eligibility for a health plan (request and response)—Retail pharmacy drugs.
ASC X12 276/277.	Health care claim status (request and response).
ASC X12 834	Enrollment and disenrollment in a health plan.
ASC X12 835	Health care payment and remittance advice.
ASC X12 820	Health plan premium payment.
ASC X12 278	Referral certification and authorization (request and response).
NCPDP D.0 and Version 1.2.	Referral certification and authorization (request and response)—Retail pharmacy drugs.
NCPDP D.0 and Version 1.2.	Retail pharmacy drug claims (telecommunication and batch standards).
NCPDP 3.0	Medicaid pharmacy subrogation (batch standard).

In the July 8, 2011 **Federal Register** (76 FR 40458), we published an interim final rule with comment period, ''Administrative Simplification: Adoption of Operating Rules for Eligibility for a Health Plan and Health Care Claim Status Transactions'' (Eligibility and Claim Status Operating Rules IFC). That rule adopted operating rules for two HIPAA covered transactions: (1) Eligibility for a health plan; and (2) health care claim status. The Eligibility and Claim Status Operating Rules IFC also defined the term, ''operating rules,'' revised the definition for ''standard transaction,'' revised specific related regulatory provisions, and described the relationship between operating rules and standards.

In general, the transaction standards adopted under HIPAA enable electronic data interchange (EDI) using a common interchange structure, thus minimizing the industry's need to rely on multiple formats. The standards significantly decrease administrative burden on covered entities by creating greater uniformity in data exchange, and reducing the amount of paper forms needed for transmitting data, which remains an obstacle to achieving greater health care industry administrative simplification.

Section 1172(a) of the Act states that ''[a]ny standard adopted under [Part C—Administrative Simplification—of Title XI of the Social Security Act, as amended by section 262 of HIPAA] shall apply, in whole or in part, to the following persons: (1) A health plan; (2) A health care clearinghouse; and (3) A health care provider who transmits any health information in electronic form in connection with a [HIPAA transaction].''

Section 1173(b) of the Act directs the Secretary to adopt standards providing for a standard unique health identifier for each individual, employer, health plan, and health care provider for use in the health care system. In the May 31, 2002 **Federal Register** (67 FR 38009), we published a final rule entitled, ''Health Insurance Reform: Standard Unique Employer Identifier,'' which adopted the standard for a unique employer identifier in HIPAA electronic health care transactions. In the January 23, 2004 **Federal Register** (69 FR 3434), we published a final rule entitled, ''HIPAA Administrative Simplification: Standard Unique Health Identifier for Health Care Providers'' (the 2004 NPI final rule), in which the Secretary adopted the National Provider Identifier (NPI) as the standard unique health care provider identifier and the requirements for obtaining and using the NPI. Health care providers that transmit any health information in electronic form in connection with a transaction for which the Secretary has adopted a standard (known as ''covered health care providers''), are required to obtain NPIs and use them according to the NPI regulations at 45 CFR part 162, subpart D. Specifically, under the requirements for health care providers at 45 CFR 162.410, a covered health care provider must obtain an NPI for itself and some of its subparts, use the NPI in standard transactions it conducts, and disclose its NPI to any entities that need it for standard transactions. The Secretary has not adopted a standard patient identifier.

Under section 1172(c)(2)(B) of the Act, if no standard setting organization has developed, adopted, or modified any standard relating to a standard that the Secretary is authorized or required to adopt under the Administrative Simplification provisions of HIPAA, then the Secretary may adopt a standard, relying upon recommendations of the NCVHS. In such a case, the Secretary shall publish in the **Federal Register** any recommendation of the NCVHS regarding the adoption of a standard under the HIPAA Administrative Simplification provisions. Further, the Secretary must consult with the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association (ADA), other appropriate private organizations, and appropriate Federal and State agencies regarding such standard adoption.

In this proposed rule, we address the adoption of a unique health plan identifier, the adoption of a data element that would serve as an identifier for other entities, an addition to the NPI requirements, and a change to the compliance date for the ICD–10–CM and ICD–10–PCS code sets.

C. The Unique Health Plan Identifier (HPID) and the Affordable Care Act

Section 1104(c)(1) of the Affordable Care Act, enacted on March 23, 2010, directs the Secretary to promulgate a final rule establishing a unique health plan identifier that is based on the input of a Federal advisory committee, the National Committee on Vital and Health Statistics (NCVHS). Section 1104 of the Affordable Care Act authorizes the Secretary to promulgate the rule on an interim final basis and indicates that such rule shall be effective not later than October 1, 2012.

Health plans are currently identified for different purposes using different identifiers that have different sources, formats, and meaning. A health plan may have multiple identifiers, each assigned by a different organization for a different purpose. The following discussion focuses on the types of identifiers that currently may be used to identify health plans in standard transactions. State regulators, for instance, use the National Association of Insurance Commissioners' (NAIC) Company code to identify health plans when a health plan is licensed to sell or offer health insurance in a particular State. The U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS) use the 9-digit Employer Identification Number (EIN) and a 1-digit alphabetic or a 3-digit plan number to identify health plans. Employers, sole proprietorships, corporations, partnerships, non-profit associations, trusts, estates of decedents, government agencies, certain individuals, and other business entities, use EINs to identify health plans for a host of purposes and transactions. The IRS uses the EIN to identify taxpayers that are required to file various business tax returns. Health care clearinghouses assign proprietary identifiers to health plans for use in standard transactions. Multiple clearinghouses may identify the same health plan using different proprietary identifiers in different covered transactions. Health plans may use other existing identifiers, such as a tax identification number (TIN) or an EIN, to identify themselves in the standard transactions, to more easily integrate into existing proprietary systems, or for use on health insurance cards that they issue to health plan enrollees.

Not only are health plans identified using a variety of identifiers, but these identifiers have different formats. For instance, some identifiers are alphanumeric while other identifiers are only numeric. Identifiers also differ in length; for example, NAIC codes are typically five digits while an EIN is nine digits.

The current versions of the adopted standards (ASC X12N and NCPDP) allow health plans to use these and other identifiers in standard transactions. Therefore, for the covered transactions there is no requirement for consistency in the use of identifiers for health plans. Health care providers, health plans, and healthcare clearinghouses may use EINs, TINs, NAIC numbers, healthcare clearinghouse, or health plan assigned proprietary numbers to identify health plans in standard transactions. Industry stakeholders, especially health care providers, have indicated that the lack of a standard unique health plan identifier has resulted in increased costs and inefficiencies in the health care system. Health care providers are frustrated by problems with: the routing of transactions; rejected transactions due to insurance identification errors; difficulty determining patient eligibility; and challenges resolving errors identifying the health plan during claims processing.

The Affordable Care Act specifically calls for the establishment of a unique identifier for health plans. There are however, other entities that are not health plans but that perform certain health plan functions and are currently identified in the standard transactions in the same fields using the same types of identifiers as health plans. For

example, health care clearinghouses, third party administrators (TPAs), and repricers often contract with insurance companies, self-funded employer health care plans, and provider- or hospital-run health plans to perform claims administration, premium collection, enrollment, and other administrative functions. In some cases, TPAs or other entities are identified in the same fields as health plans in the transactions, depending on the contractual relationships. As explained later in this proposed rule, we propose to adopt a data element—an other entity identifier—to serve as an identifier for these other entities.

D. The National Committee on Vital and Health Statistics (NCVHS)

In section 1104 of the Affordable Care Act, the Secretary is directed to conduct its rulemaking to establish a unique health plan identifier based on input of the NCVHS. Congress created the NCVHS to serve as an advisory body to the Secretary on health data, statistics, and national health information policy. The NCVHS has been assigned a significant role in the Secretary's adoption of all standards, code sets, and operating rules under HIPAA, including the unique health plan identifier. In section 1104(c)(1) of the Affordable Care Act, Congress reiterated that the NCVHS would retain its role in providing input on the establishment of the health plan identifier.

The NCVHS Subcommittee on Standards fulfilled these duties by conducting public hearings on the health plan identifier on July 19 through 21, 2010. Industry stakeholders, including representatives from health plans, health care provider organizations, health care clearinghouses, pharmacy industry representatives, standards developers, professional associations, representatives of Federal and State public programs, the Workgroup on Electronic Data Interchange (WEDI), the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), and individuals with health plan identifier proposals provided in-person and written testimony. Stakeholder testimony at the hearings focused on the use and need for an HPID to: facilitate the appropriate routing of transactions; reduce the cost of managing financial and administrative information; improve the accuracy and timeliness of claims payment; and reduce dissatisfaction among health care providers and patients/members by improving communications with health plans and their intermediaries. Stakeholders provided suggestions on the types of entities that need to be identified in standard transactions, those that should be eligible to obtain an HPID, and the level of enumeration for each plan (for example the legal entity, product, benefit package etc). We discuss the specifics of key issues in more detail later in this proposed rule.

1. Eligibility for an HPID

There was substantial testimony on the types of entities that should obtain an identifier and a request that HHS clearly indicate the organizations that would be required to obtain and use an identifier in standard transactions. Testifiers also offered extensive input on the need to provide an identifier for entities that do not meet the definition of health plan under HIPAA, but have a need to be identified in standard transactions. The majority of those testifying recommended that these entities, such as TPAs and health care clearinghouses, be eligible to obtain an identifier for use in the standard transactions.

2. HPID Enumeration Level

Stakeholders offered extensive input on the appropriate level of health plan enumeration. Testifier suggestions ranged from requiring health plans to enumerate at the highest level (that is the parent company), to enumerating every health plan benefit package (for example ''HMO Gold''). Some testifiers proposed that there be two types of health plan identifiers, and they used the term ''plan'' to mean both the health plan products and health plan organizations—Type 1 and Type 2 identifiers, respectively. As reflected in written testimony submitted to the NCVHS, they proposed that the Type 1 identifier identify patient-specific health plan products, for instance, a particular health insurance product, or an employee health benefit plan or other product defining the patient's coverage. The Type 2 identifier would identify organizations that perform health plan functions, such as entities issuing long-term care policies, plan organizations paying for the cost of medical care for specified populations, or entities responsible for funding high risk pools offering coverage to eligible individuals. Some testifiers also suggested that the Type 2 identifier also identify entities other than health plans that perform certain administrative or contracting functions on behalf of health plans, such as TPAs or health care clearinghouses. In addition, some of these testifiers recommended the creation of a fee schedule identifier so health care providers could download the appropriate fee schedule, just as the entity that is administering the claims transaction must do to price the claim.

Other testifiers opined that enumeration should occur at a health plan organization level and should support the ability to obtain and utilize a more granular enumeration scheme if there is a business need for further differentiation to appropriately route transactions. This proposal was based on the premise that the purpose of the HPID is to identify entities that meet the regulatory definition of health plan and are conducting the covered transactions. The HPID will be used to identify a health plan that sends or receives the covered transactions. These testifiers cautioned that requiring fee schedule, reimbursement information, or product level information in the HPID would create a level of complexity that would greatly increase the number of identifiers needed, resulting in significant health plan maintenance requirements, increased cost, and inefficiencies. These testifiers recommended that associating product information with particular identifiers should not be a goal of the HPID, although it could be addressed in future versions of the standards, implementation guides, or operating rules.

3. Timing

Stakeholders at the NCVHS hearings also stressed the importance of a smooth transition from current plan identifiers to the HPID during the enumeration process, given its potential impact on the industry. For example, they noted that health plan and health care provider information systems will need to be reprogrammed to accommodate the HPID, including the possible expansion of data fields and the creation of crosswalks between existing proprietary identifiers and the HPID. Health care clearinghouses and health IT vendors will need to update their systems to accommodate the new identifiers, and may also need to create identifier crosswalks to match current health plan identifiers to the HPID and vice versa. Health plans will need to conduct an analysis of their organizations and structure to determine, if they have subsidiaries, which of their entities qualify as health plans and need to be enumerated. The HPID may also impact information systems that involve Health Level 7 (HL7) standard protocols. Testimony from the HL7 SDO noted that it is likely that the HPID may require changes to existing scheduling, registration, pre-admission, admission, and other information systems and their screens,

work flows, and data elements collected, stored, displayed, and processed by those applications. In addition, testifiers pointed out other regulatory requirements with similar, converging compliance dates, such as: January 1, 2012 for complying with Version 5010, Version D.0 and Version 3.0; October 1, 2013 for complying with the ICD–10–CM and ICD–10–PCS medical code sets requirements; January 1, 2013 for implementing the first set of operating rules for two of the standard transactions; and other changes under the Affordable Care Act all require limited industry resources.

Finally, there was testimony related to the use of health plan identifiers in the retail pharmacy transactions, and we address this topic later in this proposed rule. (For transcripts and testimony of the July 19 and 20, 2010 NCVHS Subcommittee on Standards hearings, go to *http://www.ncvhs.hhs.gov*.)

E. The NCVHS Recommendation to the Secretary on HPID

On September 30, 2010, following the July 2010 NCVHS Subcommittee on Standards hearing, the NCVHS sent a letter to the Secretary with its recommendations for the adoption of a standard for a health plan identifier. The nine NCVHS observations addressed the following topics: (1) The definitions and types of entities eligible for enumeration with an HPID; (2) the level of entity enumeration; (3) the format and content of the HPID; (4) the directory database to support the HPID enumeration system and process; (5) the implementation of the HPID in retail pharmacy; (6) the implementation process and timing; (7) applicable testing of the HPID enumeration process; (8) the use of the HPID on health plan identification cards, and (9) the improvement in the use of standards and operating rules. The specific recommendations are as follows:

''HHS should:

• 1.1 clarify the definition of health plan as specified in the HIPAA regulations (45 CFR 160.103) for purposes of HPID eligibility and enumeration, including that property and casualty insurers and workers' compensation plans could be eligible for such enumeration even though they are not covered entities.

• 1.2 work with stakeholders to reach consensus on names and definitions for intermediary entities. Consider making these intermediary entities eligible to obtain an HPID where there is a clear use case for them to be enumerated.

• 1.3 request stakeholder input through groups such as Workgroup on Electronic Data Interchange (WEDI), America's Health Insurance Plans (AHIP), National Association of Insurance Commissioners (NAIC), and the Designated Standards Maintenance Organizations (DSMO) Committee for definitions of products to be used in plan enumeration by October 31, 2010 (or other date as deemed feasible by CMS).

• 1.4 collaborate across Federal agencies and departments to develop or identify consensus definitions affecting the identification of health plans, including Indian Health Service (IHS), Department of Veterans Affairs (VA), Department of Defense (DoD), and the Federal Employee Health Benefit Program (FEHBP).

• 1.5 coordinate, to the maximum extent feasible, the development and implementation of the HPID with other plan related requirements in the Affordable Care Act, including, for example, the consumer health insurance web portal, the health insurance exchanges and the regulatory requirements for health plans.

• 2.1 initially enumerate all health plan legal entities as defined in the HIPAA legislation and further clarified in regulations at 45 CFR 160.103.

• 2.2 determine at what level, including product (benefit package) level or other categorization, a health plan should also be enumerated, using input from stakeholders, and identify these in regulation.

• 3.1 adopt an HPID that follows the ISO Standard 7812, with Luhn check-digit as the tenth digit.

• 3.2 adopt an HPID that contains no embedded intelligence.

• 4.1 establish an HPID enumeration system and process supported by a robust online directory database.

• 4.2 direct CMS to work with stakeholders including other Federal agencies to identify the minimum necessary data elements for the directory database. Consideration should be given to including the Employer Identification Number (EIN), Taxpayer Identification Number (TIN), National Association of Insurance Commissioners (NAIC) identifier, Source of Payment Typology, and other identifiers that may assist in supporting the need to appropriately identify health plans in administrative transactions and in the updating, development and/or effective use of standards and operating rules. The database should be sufficiently flexible to enable additional information to be added initially at the discretion of the entity, and potentially in the future, as a requirement by HHS.

• 4.3 require the entity enumerated to maintain all information according to a published schedule of updates or more often as appropriate, to maintain accuracy. If there are no changes at the time of a scheduled update, the date information was validated should signify that the entity has reviewed and is confirming the data as being current.

• 4.4 make available appropriate information from the HPID directory database to support the efficient and accurate exchange of information.

• 4.5 consider, for the future, requiring that the HPID system enable electronic transactions with the directory database for users or their systems to obtain information and route transactions more efficiently and effectively.

• 5.1 not require the HPID to be used in place of the existing RxBIN/PCN identifier in retail pharmacy business and transactions.

• 5.2 require the use of HPID on the HIPAA-named standard transactions for retail pharmacy, where appropriately defined by industry through the ASC X12 and NCPDP processes.

• 6.1 consider that the effective date of October 1, 2012 be interpreted as the date to begin registering for an HPID. As such, subsequent phases should include time for enumeration and testing before a final implementation date when the HPID must be used in compliant transactions. This will ensure sufficient time for publication of the regulation and development of the enumeration system and process. Phases should include:

• October 1, 2012—March 31, 2013: Enumeration

• April 1, 2013—September 30, 2013: Testing

• October 1, 2013: Implementation

• 6.2 describe in regulation the potential purposes and uses of the HPID, including its uses in standard transactions, potential uses for health information exchange, and others. While purposes should not be restricted, the initial focus should be on enumerating entities for use in the financial and administrative transactions required under HIPAA.

• 6.3 accommodate bulk enumeration of HPID as applicable.

• 7.1 provide sufficient time and guidance for testing the HPID in transactions prior to use.

• 7.2 allow for a period during which dual use of legacy health plan identifiers and the new HPID is permitted in the transactions as appropriate.

• 8.1 encourage the use of the HPID in health plan identification cards.

• 9.1 strongly encourage the industry to collaborate to enhance operating rules for the financial and

administrative transactions to support the use of the HPID.''

For the complete text of the NCVHS' observations and recommendations, go to *http://www.ncvhs.hhs.gov/100930lt1.pdf.*

We agree in principle with the spirit and intent of the NCVHS' recommendation to the Secretary for a health plan identifier standard as relayed in the September 30, 2010 letter. In this proposed rule, we propose to adopt a health plan identifier based in large part upon the NCVHS' recommendations, with some minor departures. In section II. of this proposed rule, we itemize our proposals and, where necessary, explain the differences between the HHS proposal and the NCVHS' recommendations.

F. Definition of Health Plan

The regulatory definition of health plan at 45 CFR 160.103 was initially adopted in the Transactions and Code Sets final rule. The basis for the additions to, and clarifications of, the statutory definition of health plan is further discussed in the preamble to the December 28, 2000 final rule (65 FR 82478 and 82576) entitled ''Standards for Privacy of Individually Identifiable Health Information'' (hereinafter referred to as the Privacy Rule). The term ''health plan'' is defined at 45 CFR 160.103.

This definition of ''health plan'' references group health plans, health insurance issuers, and health maintenance organizations that are also defined in 45 CFR 160.103. These definitions are included here:

Group health plan (also see definition of health plan in this section) means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income and Security Act of 1974 (ERISA), 29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care (as defined in section 2791(a)(2) of the Public Health Service Act (PHS Act), 42 U.S.C. 300gg–91(a)(2)), including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that:

(1) Has 50 or more participants (as defined in section 3(7) of ERISA, 29 U.S.C. 1002(7)); or

(2) Is administered by an entity other than the employer that established and maintains the plan.

Health insurance issuer (as defined in section 2791(b)(2) of the PHS Act, 42 U.S.C. 300gg–91(b)(2) and used in the definition of health plan in this section) means an insurance company, insurance service, or insurance organization (including an HMO) that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance. Such term does not include a group health plan.

Health maintenance organization (HMO) (as defined in section 2791(b)(3) of the PHS Act, 42 U.S.C. 300gg–91(b)(3) and used in the definition of health plan in this section) means a Federally qualified HMO, an organization recognized as an HMO under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such an HMO.

II. Provisions of the Proposed Rule To Adopt a Standard for a Unique Health Plan Identifier (HPID)

This rule proposes an HPID as the standard for the unique identifier for health plans. We are also proposing instructions and guidance concerning how health plans may obtain an HPID. We further propose requirements that covered entities will have to meet to use the unique health plan identifier in standard transactions. This proposed rule would add provisions specific to the HPID in a new subpart (subpart E) to 45 CFR part 162.

A. The Health Plan Identifier

1. Definition of ''Controlling Health Plan'' and ''Subhealth Plan''

Health plans today have many different business structures and arrangements that affect how health plans are identified in standard transactions. There is often a ''parent'' corporation that meets the definition of health plan, which may be controlled by entities, such as holding companies, that do not meet the definition of health plan. This ''parent'' health plan may own and operate several other entities and organizations, which may also meet the definition of a health plan. While these individual health plans that are owned by the same ''parent'' corporation may have their own EIN or NAIC number, they may all use a single identifier in covered transactions because of data processing arrangements. In these situations, some health plans may not need to be identified separately in covered transactions, and may not need their own health plan identifier. To differentiate between health plan entities that would be required to obtain an HPID, and those that would be eligible, but not required, to obtain an HPID, we are proposing definitions for controlling health plan (CHP) and subhealth plan (SHP) in proposed 45 CFR 162.103 as follows.

a. Controlling Health Plan (CHP)

We would define a CHP as a health plan (as defined at 45 CFR 160.103) that—(1) controls its own business activities, actions, or policies; or is controlled by an entity that is not a health plan (2) and if it has a subhealth plan(s) (SHPs) (see definition of SHP in subpart b), exercises sufficient control over the subhealth plan(s) to direct its/their business activities, actions, or policies.

The following factors would need to be considered when determining if an entity is a CHP:

- Does the entity itself meet the definition of health plan at 45 CFR 160.103?
- Does either the entity itself or a non health plan organization control the business activities, actions, or policies of the entity?

If the answer to both questions is ''yes,'' then the entity meets the definition of CHP. We propose that an entity that meets the definition of CHP would be required to obtain a health plan identifier.

b. Subhealth Plan (SHP)

A SHP would mean a health plan (as defined in 45 CFR 160.103) whose business activities, actions, or policies are directed by a CHP. The following considerations may be helpful in determining whether an entity is a SHP:

- Does the entity meet the definition of health plan at § 160.103?
- Does a CHP direct the activities, actions, or policies of the health plan entity?

If the answer to both questions is ''yes,'' then the entity meets the definition of SHP. We propose that a SHP would not be required to obtain an HPID, but may choose to obtain an HPID, or its CHP may obtain an HPID on its behalf.

2. Proposed Use of the HPID

In proposed 45 CFR 162.510, we propose HPID usage requirements for all covered entities. We propose to require all covered entities to use an HPID wherever a covered entity identifies a health plan in a covered transaction. Covered entities would obtain the HPIDs of health plans from the health plans themselves or from the Enumeration System, which we describe later in this proposed rule. If a covered entity uses a business associate to conduct standard transactions on its behalf, the covered entity must require that its business associate use an HPID in each field where the business

associate identifies a health plan in all covered transactions.

The HPID may also be used for any other lawful purpose that requires the identification of health plans.

Some examples of permitted uses include the following:

- Health plans may use HPIDs in their internal files to facilitate processing of health care transactions.
- A health plan may use an HPID on a health insurance card.
- The HPID may be used as a cross-reference in health care fraud and abuse files and other program integrity files.
- Health care clearinghouses may use HPIDs in their internal files to create and process standard and non-standard transactions, and in communications with health plans and health care providers.
- HPIDs may be used in patient medical records to help specify patients' health care benefit package(s).
- HPIDs may be used to identify health plans in electronic health records (EHRs).
- HPIDs may be used to identify health plans in Health Information Exchanges (HIEs).
- HPIDs may be used to identify health plans in Federal and State health insurance exchanges.
- HPIDs may be used to identify health plans for public health data reporting purposes.

3. Proposed Health Plan Identifier Requirements for Health Plans

In 45 CFR 162.512, we propose HPID implementation specifications for health plans. We propose to require all CHPs, as defined in 45 CFR 162.103, to obtain HPIDs from the Enumeration System in accordance with the enumeration process, which is described later in this proposed rule. In addition, CHPs could obtain HPIDs from the Enumeration System on behalf of their SHPs, as defined in 45 CFR 162.103, or direct their SHPs to obtain HPIDs directly from the Enumeration System. Any SHP would be eligible to obtain an HPID regardless of whether or not its CHP directs it to obtain an HPID. A CHP could only obtain one HPID for itself.

We propose to require each health plan to disclose its HPID to any entity, upon request, that needs the HPID to identify that health plan in a standard transaction. We propose to require each health plan to ensure that its own data in the Enumeration System is correct and that each health plan submits changes (updates, corrections, etc.) to its own data to the Enumeration System within 30 days of the date the change took place. A SHP would ultimately be responsible for submitting updates for its own data in the Enumeration System regardless of whether it obtained its HPID independently or the CHP obtained the HPID on its behalf. We are requesting comments on whether a SHP should be responsible for submitting updates to its own data if a CHP obtained the HPID on its behalf.

This proposed rule provides a discussion on how CHPs and SHPs will obtain an HPID from the Enumeration System. Health plans would be able to begin to apply for an HPID on or after the effective date of the final rule, which we expect to be October 1, 2012, and must use it in standard transactions by the compliance date of the final rule.

a. Requirements and Options for Obtaining and Using a Health Plan Identifier

While a CHP would be required to obtain a health plan identifier, there would be different options available for the enumeration of SHPs based on a CHP's organizational structure and business needs. The CHP may analyze its organizational structure to determine if and which of its SHPs need a HPID based on whether the SHP needs to be identified in covered transactions. The CHP may obtain HPIDs on behalf of its SHP, or it may direct the SHPs to obtain the HPIDs. While a CHP could only obtain 1 HPID for itself, a CHP could use the HPID of its SHPs for any lawful purpose, including in the transactions.

Self-insured group health plans are included in the definition of health plan in § 160.103. Because of this, self-insured group health plans will need to obtain a health plan identifier if they meet the definition of a CHP. We specifically mention self-insured group health plans as there was industry discussion about whether these health plans should be required to obtain HPIDs because they do not always need to be identified in the standard transactions. As discussed, the primary purpose of the HPID is for use in the standard transactions. Many self-insured group health plans contract with third party administrators or other entities to perform health plan functions on their behalf and those entities, not the self-insured group health plans, may be identified in the standard transactions. Some in the industry thus suggested not requiring self-insured group health plans to obtain HPIDs as they may not need to be identified in the standard transactions, while others recommended requiring these plans to obtain HPIDs as they may be the financially responsible party. Given that self-insured group health plans are included in the definition of health plan and there is a potential need to be identified in the standard transactions, we propose that they be required to obtain a HPID if they meet the definition of a CHP. We are soliciting comment on this issue.

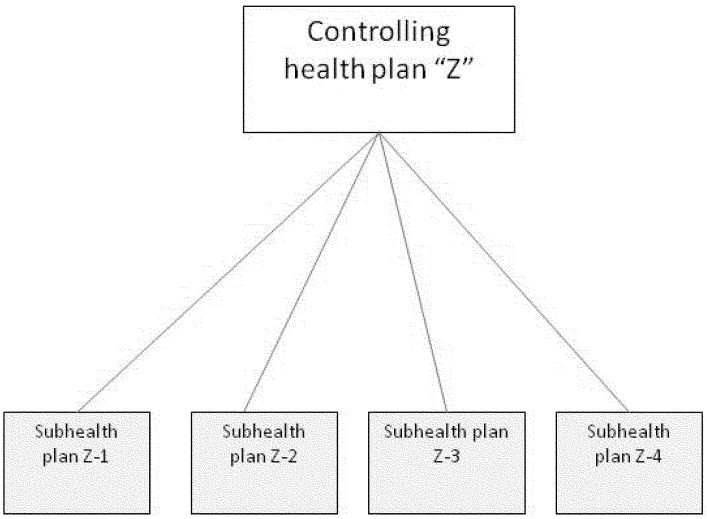
A SHP would be able to obtain an HPID even if its CHP does not obtain one on its behalf or does not direct the SHP to obtain an HPID. We encourage CHPs and SHPs to coordinate their HPID applications to prevent duplicative and unnecessary numbers. See Table 2 for a comparison of requirements for obtaining an HPID.

TABLE 2—PROPOSED ENUMERATION REQUIREMENTS AND OPTIONS FOR CHPS AND SHPS

Entity	Enumeration requirements	Enumeration options
CHPs	Must obtain an HPID for itself	May obtain an HPID(s) for its SHP(s). May direct its SHP(s) to obtain an HPID(s).
SHPs	Not required to obtain an HPID	May obtain an HPID at the direction of its CHP. May obtain an HPID on its own initiative.

Using Illustration A and B, we provide examples of enumeration options to demonstrate the ways a CHP could choose to enumerate itself and its SHPs, if applicable. For these options, we are assuming that CHP ''Z'' and the SHPs Z–1, Z–2, Z–3, and Z–4 each meets the definition of health plan at 45 CFR 160.103.

Illustration A



(1) Illustration A. Enumeration Option 1: CHP and Each SHP Obtain HPIDs

CHP ''Z'' meets the definition of a health plan and controls its own business activities, actions, and policies. Therefore CHP ''Z'' would be required to obtain an HPID. CHP ''Z'' would then analyze its organizational structure and business needs to determine if and which of its SHPs need an HPID for use in standard transactions. CHP ''Z'' may determine that SHPs Z–1, Z–2, Z–3, and Z–4 each need their own HPID for use in the standard transactions as CHP ''Z'' and each of its SHPs may have separate data processing centers or arrangements. Thus, CHP ''Z'' would obtain an HPID, and each of the SHPs, from Z–1 to Z–4 would obtain their own HPIDs. SHPs could obtain HPIDs in one of two ways as described in the following scenarios:

- Scenario 1—CHP ''Z'' obtains all the HPIDs. It obtains one HPID for itself and it obtains an HPID on behalf of each SHP. In total there are five HPIDs.
- Scenario 2—CHP ''Z'' directs its SHPs to obtain HPIDs: CHP ''Z'' obtains its own HPID and each of the SHPs would obtain their own HPIDs individually. Ultimately, the result would be the same as scenario 1: The CHP and each of the four SHPs would have their own HPIDs and there would be a total of five HPIDs.

Other possible scenarios would involve CHP ''Z'' obtaining fewer than all five HPIDs, or directing fewer than all four SHPs to obtain an HPID. Each of the SHPs may also decide on its own to obtain an HPID without direction from the CHP to do so.

(2) Illustration A. Enumeration Option 2: CHP Obtains HPID. SHPs Do Not Obtain HPIDs

As in the first example, CHP ''Z'' would be required to obtain an HPID, as it meets the definition of health plan and controls its own business activities, actions, and policies.

CHP ''Z'' may determine that none of its SHPs needs to be identified in standard transactions, and therefore none of the SHPs needs its own HPID. Instead, CHP ''Z'' may direct SHPs Z–1, Z–2, Z–3, and Z–4 to use the CHPs' HPID in the standard transactions.

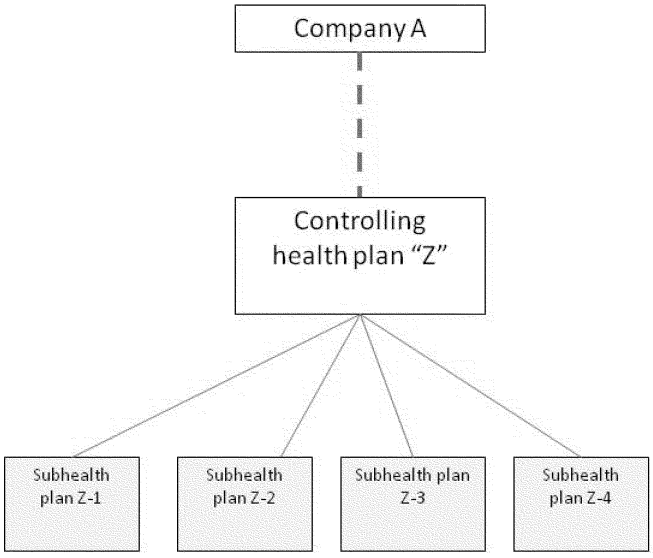
(3) Illustration A. Enumeration Option 3: CHP obtains HPID. Some, But Not All SHPs Obtain HPIDs

Again, CHP ''Z'' would be required to obtain an HPID, as it meets the definition of health plan and controls its own business activities, actions, and policies.

CHP ''Z'' may then examine its organizational structure to determine which of its SHPs need an HPID for use in a standard transaction. CHP ''Z'' may determine that SHPs Z–3 and Z–4 must be uniquely identified in the covered transaction because, for example, they do not share the same data processing centers as CHP ''Z'' and would each want to use their own HPID. SHPs Z–3 and Z–4 would use their own HPIDs in standard transactions. SHPs Z–3 and Z–4 could obtain their HPIDs in one of the following ways:

- CHP ''Z'' could direct SHPs Z–3 and Z–4 to obtain their own HPIDs.
- CHP ''Z'' could obtain HPIDs on behalf of SHPs Z–3 and Z–4. CHP ''Z'' may determine that based on its organizational structure SHPs Z–1 and Z–2 do not need separate HPIDs for use in standard transactions as they may share data processing systems with CHP Z, SHP Z–3, or SHP Z–4. CHP ''Z'' may direct SHP Z–1 and Z–2 to use CHP ''Z''s HPID, SHP Z–3's HPID, or SHP Z–4's HPID in the transactions. CHP ''Z'' may make this determination based on the relevant data processing systems.

Illustration B



(4) Illustration B. Enumeration Option 1: CHP and Each SHP Obtain HPIDs

Illustration B provides an example of a health plan being controlled by Company A, which is a holding company. Holding companies are examples of entities that control the business, activities, actions, or policies of other legal entities such as health plans, but typically do not meet the definition of a health plan as defined in 45 CFR 160.103. Assuming Company A does not meet the definition of a ''health plan'' under the relevant definition in 45 CFR 160.103, it would not be eligible to obtain an HPID.

CHP ''Z'' meets the definition of health plan as found in 45 CFR 160.103, is controlled by an entity that is not a health plan, and exercises sufficient control over the subhealth plans to direct their business activities, actions, or policies. Therefore, it meets the definition of ''controlling health plan'' as proposed in 45 CFR 162.103, and would be required to obtain an HPID for itself.

A similar analysis as discussed in Illustration A would need to be done to determine how subhealth plans Z–1, Z–2, Z–3, and Z–4 would be enumerated. CHP ''Z'' must examine its organizational structure to determine which of its SHPs need an HPID for use in standard transactions, and the same enumeration options for subhealth plans that existed for Illustration A would exist in this example.

b. Examples of Use of HPID in Standard Transactions

Within each transaction, a health plan may need to be identified in fields that do not specifically require the use of a health plan identifier. A health plan could need to be identified, for instance, in data fields that indicate the payer of the claim or the intended recipient of the transaction, or the information source for a particular request. To illustrate how the HPID could be used in standard transactions, we will look at a specific segment from one transaction standard. This example illustrates how covered entities would be required to identify a health plan in a standard transaction. This example is not meant to state who or what must be identified in the fields in the transaction, change what entities can be identified in specific loops or segments in the transaction standards, or affect the use of identifiers for non-health plans. It is important to note that the implementation of the HPID would not prohibit or affect the identification of other entities in these loops or segments if entities other than health plans need to be identified in those loops or segments.

For this example, we will look at a specific segment from one transaction standard—the ASC X12 Version 5010 health care eligibility benefit inquiry and response (also known as the 271). In this example, the segment is the NM1-Information Source Name in the 2100A loop—Information Source. The standard provides the following definition of information source: ''The information source is the entity that has the answer to the questions being asked in a 270 Eligibility or Benefit request transaction. The information source is typically the insurer or payer. In a managed care environment, the information source could possibly be a primary care physician or gateway health care provider. Regardless of the information source's actual role in the healthcare system, they are the entity who maintains the information regarding the patient's coverage.'' The information source is identified in loop 2100A. The NM1 segment, information source name, provides specific details about the information source through data elements. The NM1 segment is comprised of nine reference descriptors. These reference descriptors provide information about a specific data element. For instance, NM101—Entity ID Code—is the code identifying the organizational entity, a physical location, property or an individual. For NM101, there are specific codes that can be used to describe the information source. Table 3 represents the NM1 segment. The chart is meant to demonstrate how the identification of a health plan in the NM1 segment will change after use of the HPID is mandated. For this example, the information source is the health plan.

In Table 3, Column I, the reference descriptor provides the data element being described in the NM1 segment. Table 3, Column II provides the name of the reference descriptor in Table 3, Column I and describes what is being conveyed in that data element. Table 3, Column III lists the codes that the standard permits to be used to describe

the information source. Table 3, Column IV provides the definition of the corresponding code in Table 3, Column III. Table 3, Column V shows what could have been used to identify a health plan prior to the HPID implementation. Table 3, Column VI shows what will be used to identify a health plan after implementation of the HPID.

TABLE 3—EXAMPLE 1, ELIGIBILITY RESPONSE TRANSCTION, LOOP 2100A, SEGMENT NM1—INFORMATION SOURCE NAME (VERSION 5010)

I	II	III	IV	V	VI
Reference description	Name	Code	Definition	Content of the field before HPID compliance date	Content of the field after HPID compliance date
NM101	Entity identifier Code	2B	Third-Party Administrator	If a health plan is to be identified as the information source, then Entity Code Qualifier "PR" will be used.	If a health plan is to be identified as the information source, then Entity Code Qualifier "PR" will be used.
		36	Employer.		
		GP	Gateway Provider.		
		P5	Plan Sponsor.		
		PR	Payer.		
NM108	Identification Code Qualifier.	24	Employer's Identification Number (EIN).	If a health plan is to be identified as the information source, Identification Code Qualifier 24, 46, FI, NI, or PI can be used.	If a health plan is to be identified as the information source, only Identification Code Qualifier XV can be used.
		46	Electronic Transmitter Identification Number (ETIN).		
		FI	Federal Taxpayer's Identification Number.		
		NI	National Association of Insurance Commissioner's (NAIC) Identification.		
		PI	Payer Identification.		
		XV	Centers for Medicare & Medicaid Services Plan ID.		
		XX	Centers for Medicare & Medicaid Services Provider Identifier.		
NM109	Identification Code			Depending on the Identification Code Qualifier, this could be the EIN, ETIN, Tax Id, the NAIC, or any Proprietary Id.	HPID only (if a health plan is to be identified as the information source).

Currently, if the health plan is the information source and needs to be identified in the transactions, it may be identified using a number of different identifiers as shown in Table 3, Column V. If this proposal is finalized and the HPID is adopted, and if a health plan is identified as the information source, it must be identified using an HPID as shown in Table 3, Column VI.

As discussed earlier in this proposed rule, stakeholders at the NCVHS hearings expressed different viewpoints on the appropriate level of health plan enumeration. Some industry stakeholders encouraged health plan enumeration at a very high level (for example, at the level of the health plan's legal entity), while other stakeholders supported enumeration at the benefit package level. We analyzed and considered these viewpoints when we developed the HPID policy proposed herein.

We began by exploring the purpose of the HPID. While we considered multiple uses for the HPID, we determined that the primary purpose of the HPID is for use in standard transactions in order to identify health plans in the appropriate loops and segments and to provide a consistent standard identifier so a health plan no longer uses multiple identifiers in the HIPAA covered transactions. Therefore, we analyzed the transaction standards to determine the existing segments and loops where a health plan may need to be identified, what identifiers are currently used in those loops and segments to identify health plans, and what information that loop or segment is providing when a health plan is being identified. We also carefully considered the information that industry stakeholders reported was missing in covered transactions and suggested could be provided using a health plan identifier. We determined that much of the information testifiers wanted to obtain through the health plan identifier might already be available in other parts of the transaction standards and associated operating rules.

The CAQH CORE 154 eligibility content and operating rule, to be used with the ASC X12 Version 5010 Standard for Electronic Data Interchange Technical Report Type 3—Health Care Eligibility Benefit Inquiry and Response

(270/271) (hereinafter referred to as the Version 5010 270/271 eligibility inquiry/response standard), was adopted through an interim final rule with comment period published in the July 8, 2011 **Federal Register** (76 FR 40458), with a compliance date of January 1, 2013. These operating rules require that more information be provided in the Version 5010 270/271 eligibility inquiry/response standard, including information about a patient's health plan name, coinsurance, copayment, and deductibles including in-network and out-of-network, as well as remaining deductible amounts. The loops, segments, and codes within the transaction standards are already available vehicles for providing this information today. Future versions of standards, as well as the adoption of operating rules to supplement the standards, can address many of the other issues raised by stakeholders and can continue to address issues or problems in the transactions as they arise. Therefore, we do not believe that the HPID needs to provide the level of detail that some testifiers suggested.

In addition, requiring health plans to enumerate to a more granular level may prove burdensome to the industry as benefit package information and offerings change frequently and would require constant updates by health plans. Health care providers may also need to update their software and systems frequently to ensure the accuracy of information. This could result in increased time spent by health plan and health care provider staff to ensure appropriate information is being used for eligibility determination and claim payments.

We developed the proposed HPID policy after considering stakeholder testimony, analyzing transaction standards' loops and segments where the health plan identifier will be used, and taking into account newer versions of the standards and the adoption of operating rules to complement the standards.

4. HPID Standard Format

a. Introduction

Per the NCVHS recommendations, which were based on stakeholder testimony from a wide range of potential HPID users, we propose to adopt an HPID that is a 10-digit, all-numeric identifier with a Luhn check-digit as the tenth digit. (See § 162.510). The Luhn check-digit is an algorithm used most often on credit cards as a check sum to validate that the card number issued is correct. See *http://www.merriampark.com/anatomycc.htm* for more information. We seek public and stakeholder comments on the feasibility and utility of this format for the HPID.

b. The International Organization for Standardization (ISO) Standard

The International Organization for Standardization (ISO) is the world's largest developer and publisher of international standards. National standards institutes from 160 nations comprise the ISO. The ISO has published more than 16,500 standards for numerous industries such as agriculture, electrical engineering, and other information technology industries. For more information on the ISO, refer to the Web site at *http://www.iso.org.* Based on stakeholder testimony, the NCVHS recommendations, and our review, we propose that the ISO 7812 standard format, ISO/IEC 7812–1:2006 and ISO/IEC 7812–2:2007, which consists of a 10-digit, all-numeric identifier with a Luhn check-digit as the tenth digit, be adopted as the standard for the HPID. This standard incorporates the same format that is used for the enumeration of health care providers via the National Provider Identifier (NPI), adopted in the NPI final rule, published in the January 23, 2004 **Federal Register** (69 FR 3434). Like the proposed standard for the HPID, the standard for the NPI is a 10-position all numeric identifier with a numeric check digit to assist in identifying erroneous or invalid NPIs. The HPID format would essentially be an intelligence-free identifier as the start digit of the number would provide the only piece of intelligence, signaling that the identifier had been provided to a health plan and not to an ''other entity'' or a health care provider. The OEID will have a different start digit than the HPID. The number of digits of the HPID would not exceed the number permitted for identifiers in the relevant data fields of the standard transactions. If additional capacity for HPIDs were needed in the future, the relevant data fields would permit additional numeric digits to be added at that time. Also, an all-numeric identifier: is more quickly and accurately keyed in data-entry applications; is more easily used in telephone keypad applications; does not require translation before application of the check digit algorithm and thus uses the full ability of the check digit algorithm to detect keying errors; will require less change for systems that currently use a numeric identifier; and is compatible with ISO identification card standards for a card issuer identifier, while Alphanumeric identifiers do not possess these important characteristics.

B. Adoption of the Other Entity Identifier (OEID)

In addition to proposing the adoption of an identifier for health plans, we are also proposing to adopt a data element in the form of an optional identifier for other entities for use in standard transactions, consistent with the recommendations of the NCVHS. Section 1104(c) of the Affordable Care Act provides in relevant part that the Secretary ''shall promulgate a final rule to establish a unique health plan identifier (as described in section 1173(b) of the Act (42 U.S.C. 1320d–2(b))) based on the input of the National Committee on Vital and Health Statistics.'' Section 1173(a)(1)(A) of the Act states in relevant part that ''[t]he Secretary shall adopt standards for transactions, and data elements for such transactions, to enable health information to be exchanged electronically, that are appropriate for—(A) the financial and administrative transactions described in paragraph (2)* * *, '' which contains a list of the transactions for which the Secretary has to adopt a standard.

The OEID would serve as an identifier for entities that are not health plans, health care providers, or ''individuals'',[3] yet they need to be identified in standard transactions. Under this proposed rule, these other entities would not be required to obtain an OEID, but they could obtain and use one if they needed to be identified in covered transactions. If they obtained an OEID, these entities would be expected to use it and disclose it upon request to entities that need to identify such entities for covered transactions.

We are proposing to make obtaining and using the OEID voluntary. Stakeholders expressed a strong interest in being able to obtain an identifier, and the NCVHS agreed and recommended that such an identifier would be beneficial to the industry. We believe that voluntary obtaining and using is appropriate at this time, although we recognize that the OEID may be more beneficial if obtaining and using an OEID were required. We could do this, for example, by requiring health plans that have business relationships with other entities that perform certain functions on their behalf to direct in a contract or other arrangement these other entities to obtain and use an OEID. Alternatively, covered entities could on

[3] Individual is defined at 45 CFR 160.103 as ''the person who is the subject of protected health information.''

their own initiative require their trading partners or business associates obtain OEIDs as part of their own agreed upon business arrangements. This rule does not propose to preclude such a business practice. We are interested in industry opinions about our proposal to make obtaining and using the OEID voluntary, and we also welcome comments about whether and how it should be made mandatory.

1. The Other Entity Identifier (OEID)

As discussed in section I. of this proposed rule, health plans often use the services of other entities to conduct certain financial and administrative transactions on their behalf. Rental networks, benefit managers, third party administrators, health care clearinghouses, repricers, and other third parties often perform functions similar to, or on behalf of, health plans. In many cases, these other entities are currently being identified in standard transactions in the same fields and using the same type of identifiers used by health plans. For example, when a covered health care provider conducts a transaction to determine eligibility for a health plan (referred to as an ''eligibility for a health plan transaction''), the health care provider may send an electronic request to obtain information about a patient's eligibility for health care services to an entity referred to as an ''information source.'' This ''information source'' provides information back to the health care provider about a specific patient's health care coverage that a particular health plan provides. The ''information source'' for the patient's eligibility information may be a health plan or one of these other entities that perform financial and administrative services on behalf of that health plan. Currently, in the transaction standard for the eligibility for a health plan transaction, health plans, and the other covered entities may use the same type of identifiers, such as a Payer Identifier (PAYERID) or an EIN, to identify themselves as the ''information source.''

In its September 30, 2010 letter to the Secretary, the NCVHS explained the integral role other entities play in health care administrative and financial electronic transactions. The NCVHS acknowledged that while these other entities may not meet the definition of ''health plan'' under HIPAA, they nevertheless need to be identified in the transactions to ensure successful, efficient communication. The reality is that these entities often need to be identified in the same fields in which a health plan would need to be identified because they perform very similar functions. These other entities are using many of the same identifiers health plans currently use in covered transactions. In addition, the NCVHS recommended that HHS consider allowing these entities to obtain HPIDs as they may be the actual recipients of eligibility queries or claims on behalf of the health insurance issuer or the entity ultimately responsible for payment. The NCVHS stressed the importance of enabling these entities to be enumerated, and recommended that HHS consider making these entities eligible to obtain an HPID where there is a clear use case for them to be enumerated. Based on the testimony NCVHS heard, information we have received, and for the reasons stated previously, we believe that a clear use case does exist for these other entities to be enumerated. Moreover, we anticipate that with the recent advances in health information exchange and the development of health information networks, the need to identify these other entities in financial and administrative electronic transactions will only increase.

Offering the OEID as an adopted data element to identify other entities that need to be identified in covered transactions should reduce costs and improve efficiency for covered entities. Because other entities are identified in the transaction standards in a similar manner as health plans, we believe that establishing a data element to serve as an identifier for these entities will increase efficiency by encouraging the use of a uniform identifier and promote compliant use of the HPID for health plans. Like the standard for HPID we are proposing to adopt, the OEID that we are proposing would follow ISO standard 7812, and be a 10-digit, all-numeric identifier with a Luhn check-digit as the tenth digit. Consequently, entities that have implemented the HPID and are seeking to implement the OEID would not need to significantly modify their information technology systems to accommodate the use of the OEID.

Therefore, we are proposing to establish the OEID for use in standard transactions to identify entities that are not eligible to obtain an HPID or NPI and are not individuals (as defined at 45 CFR 160.103). The OEID would be used to identify these other entities where these other entities need to be identified in the standard transactions, and for any other lawful purpose. These entities would be eligible, but not required, to obtain an OEID for themselves. An OEID would be obtained by the other entity from the Enumeration System identified in 45 CFR 162.508 as discussed in this proposed rule. Changes to its required data elements would need to be communicated to the Enumeration System within 30-days of the change. We solicit industry and stakeholder comments on our proposed enumeration of other entities and adoption of the OEID for use in the standard transactions.

C. Assignment of the HPID and OEID

1. The Enumeration System

We propose that in 45 CFR 162.508, the Enumeration System would assign unique HPIDs and OEIDs to eligible health plans and eligible other entities, respectively. The Enumeration System would be a comprehensive system for uniquely identifying and enumerating all eligible health plans and other entities. It would collect and maintain certain identifying and administrative information about CHPs, SHPs, and other entities. The Enumeration System would also disseminate information through a publicly available searchable database or through downloadable files. Entities may also obtain a CHP's or SHP's HPID or an entity's OEID by requesting the HPID from the health plan or the OEID from the other entity.

HPIDs and OEIDs would only be assigned by the Enumeration System through an online application process. A health plan or other entity, when applying online for an HPID or OEID, would be required to provide certain identifying and administrative information. We anticipate this information will be used to verify the identity and eligibility of health plans and other entities during the application process. We anticipate further that a help desk will be available to assist health plans and other entities with the online application process as necessary and to notify health plans or other entities about problems associated with their online applications.

The Enumeration System would also be able to deactivate or reactivate an HPID or OEID based on receipt of sufficient information. Examples of situations justifying deactivation of an HPID may include the fraudulent use of the HPID by the health plan itself or an other entity, the change of ownership of a health plan, or the restructuring of a health plan's data processing systems such that the SHP determines that its HPID would no longer be needed. Deactivation of an OEID may also occur in similar situations, for example the fraudulent use of an OEID by itself or an other entity, the change of ownership of the other entity, or if the other entity no longer exists.

Reactivation of an HPID or OEID could occur, for instance, if there were a change of ownership of a health plan or other entity, or for health plans if there were a restructuring of a health plan's data processing systems and the SHP determines that it again needs its HPID.

We solicit stakeholder comments on our proposals regarding the enumeration system and process.

D. Other Considerations

1. Pharmacy Transactions

During the July 2010 NCVHS hearings on the health plan identifier, industry stakeholders also expressed views on the use of the HPID in retail pharmacy transactions. Currently, the pharmacy industry utilizes two unique identifiers in retail pharmacy transactions, the Bank Identification Number/Issue Identification Number (BIN/IIN) and the Processor Control Number (PCN). These identifiers are programmed into the pharmacy's software and identify the route for processing the transaction from the pharmacy to the entity responsible for administering the claim, which could be the health plan or the pharmacy benefit manager. A pharmacy benefit manager is a third party administrator for prescription drug programs and is responsible for processing and paying claims on behalf of the health plan or drug plan sponsor.

The BIN/IIN is a 6-digit number, requested by the pharmacies from either the American National Standards Institute (ANSI) or the National Council for Prescription Drug Programs (NCPDP), for use by retail pharmacies to route prescription drug claims to the entity responsible for processing the transaction, usually the pharmacy benefit manager. The PCN is an identifier of up to 10 characters that is assigned by pharmacy benefit claim processors if there is a need to further define benefits and routing. For instance, the Medicare Part D prescription drug benefit plan Coordination of Benefits (COB) contractor has unique requirements for processing Medicare Part D claims. To accommodate those requirements, many administrators or processors have created PCNs to further differentiate the Medicare Part D prescription drug plan benefit COB business from their other (commercial or Medicaid) COB business. Both the BIN/IIN and PCN are embedded into pharmacies' software programs, and identify the entity for processing claims. The identifiers are tied to the entity that will be processing the transaction, or where the transaction is to be sent. These identifiers are included in information from pharmacy benefit managers and/or health plans that are distributed to pharmacies to provide details on who will be processing the transaction, where to route the transaction and what rules are expected to be applied during transaction processing. The use of the BIN/IIN and PCN allow pharmacy claims to be adjudicated and responded to by the pharmacy benefit manager or health plan within seconds. According to the NCPDP, the use of these two identifiers has been very effective in ensuring efficient, timely prescription claim processing. Both pharmacy and non-pharmacy stakeholders testified at the July 2010 NCVHS Subcommittee on Standards hearings that the HPID, BIN/IIN and PCN identifiers convey different information and serve different purposes. The BIN/IIN and PCN identifiers cannot provide the information needed about the health plan, nor can the information in the HPID provide the information inherent in the BIN/IIN and PCN identifiers.

A representative of the retail pharmacy industry testified that if the health plan identifier were required to replace the BIN/IIN and/or PCN, such a change would be extremely costly to the retail pharmacy industry. For example, combination medical and/or prescription drug plan identification cards would need to be re-issued with the HPID, with no direct patient or pharmacy benefit. The NCPDP also noted that an HPID-only requirement would require a substantive change to the NCPDP D.0. In Version D.0, the Plan ID field is either not used or its use is optional, meaning its use was not intentionally defined in the standard. However, the use of the BIN and PCN fields is mandatory.

In its September 30, 2010 recommendation letter to the Secretary, the NCVHS observed that based on the testimony presented at the July 2010 hearings, retail pharmacy transactions utilize the BIN/IIN and/or PCN identifier to facilitate their transaction processing and that changing to an other identifier would significantly affect existing data flows in the retail pharmacy industry that currently work effectively. As such, the pharmacy industry requested an exemption from the requirement to use only HPID in retail pharmacy transactions because of the current success with the BIN/IIN and PCN identifiers for routing purposes. The NCVHS recommended that use of the HPID in place of the existing BIN/IIN and PCN identifier in retail pharmacy business transactions not be required, but that the HPID be required on the HIPAA-named standard transactions for retail pharmacy. We are not proposing any changes to the NCPDP Version D.0 standard, and we do not believe that the HPID should be required in place of the existing BIN/IIN and PCN identifier in retail pharmacy transactions.

2. Definition of Covered Health Care Provider

We are proposing to move the definition of ''covered health care provider'' from 45 CFR 162.402 to 45 CFR 162.103 because the term ''covered health care provider'' has a broader application beyond just Subpart D.

E. Effective and Compliance Dates for the HPID

In section 1104(c)(1) of the Affordable Care Act, Congress specified that ''the Secretary shall establish a standard for a unique health plan identifier based on the input of the National Committee on Vital and Health Statistics.'' Congress further provided that the rule shall be ''effective'' not later than October 1, 2012. Therefore, we are planning for the effective date of this rule to be October 1, 2012. The effective date would mark the beginning of the implementation period for the HPID, which we expect would be the first day health plans may apply to obtain an HPID and the first day an entity may apply to obtain an OEID from the Enumeration System. We propose that the compliance date for all covered entities, except small health plans, to use the HPID in standard transactions be 2 years after the effective date of the final rule which, if the effective date is October 1, 2012 as we are planning, would be October 1, 2014. The compliance date for small health plans would be October 1, 2015. Small health plans would not be prohibited from complying earlier and using the HPID in their transactions at any time before October 1, 2015.

The Congress uses the terms ''effective'' and ''adoption'' in the Affordable Care Act as applied to both the rules that the Secretary must promulgate to adopt the various standards as well as to the standards themselves. In these provisions of the Affordable Care Act, Congress consistently uses the term ''effective date'' to mean the time when the relevant provision—either the rule or an adopted standard—must go into effect.

In line with our previous interpretations, we have interpreted the ''effective date'' of this rule to mean the date the Secretary adopts the HPID as the Unique Health Plan Identifier. In the NPI final rule, for instance, the effective date of the rule was the date the Secretary adopted a standard unique

health identifier for health care providers, and the compliance date marked the time by which an entity had to obtain and use an NPI in the standard transactions. We consequently interpret this section of the Act as specifying October 1, 2012 as the effective date of the final rule, when the policies take effect and the implementation period for the HPID begins.

Understanding that Congress intended the effective date for the HPID final rule to be October 1, 2012, we note that this date marks the first day that a health plan will be able to apply to obtain an HPID. The 2-year implementation period for this new standard sets the date by which health plans (excluding small health plans) must obtain and covered entities (excluding small health plans) must use an HPID in the standard transactions as October 1, 2014. The compliance date for small health plans would be October 1, 2015.

We are soliciting comment on the effective and compliance dates for the HPID.

III. Proposed Addition to the National Provider Identifier Requirements

A. Background

As discussed in section I of this proposed rule, the final rule adopting the NPI as the standard unique health identifier for health care providers was published on January 23, 2004 (69 FR 3434) (''2004 NPI final rule''). While the 2004 NPI final rule requires covered health care providers to obtain NPIs for themselves and certain subparts and use them in standard transactions, it does not require a health care provider who is not a covered entity to obtain an NPI. Even if a noncovered health care provider chooses to obtain an NPI, the provider is not required to comply with certain NPI requirements, which means the provider does not have to disclose its NPI to entities who may need it for standard transactions. When a noncovered health care provider does not obtain an NPI or does not disclose it, certain problems arise for entities that need to identify that noncovered health care provider in standard transactions. We are proposing an addition to the requirements for the NPI regulations to address such problems.

The 2004 NPI final rule (69 FR 3445) recognized that, ''[s]ituations exist in which a standard transaction must identify a health care provider that is not a covered entity. * * * A noncovered health care provider may or may not have applied for and received an NPI. In the latter case, * * * an NPI would not be available for use in the standard transaction. We encourage every health care provider to apply for an NPI, and encourage all health care providers to disclose their NPIs to any entity that needs that health care provider's NPI for use in a standard transaction. Obtaining NPIs and disclosing them to entities so they can be used by those entities in standard transactions will greatly enhance the efficiency of health care transactions throughout the health care industry. * * * The absence of NPIs when required in * * * claims by the implementation specifications may delay preparation or processing of those claims, or both. Therefore, we strongly encourage health care providers that need to be identified in standard transactions to obtain NPIs and make them available to entities that need to use them in those transactions.''

The 2004 NPI final rule (69 FR 3445) provided the following example of a situation where a health care provider is not a covered entity but its NPI is needed for a standard transaction: ''A pharmacy claim that is a standard transaction must include the identifier (which, as of the compliance date, would be the NPI) of the prescriber. Therefore, the pharmacy needs to know the NPI of the prescriber in order to submit the pharmacy claim. The prescriber may be a physician or other practitioner who does not conduct standard transactions. The prescriber is encouraged to obtain an NPI so it can be furnished to the pharmacy for the pharmacy to use on the standard pharmacy claim.''

Within just a few months after implementation of the 2004 NPI final rule, this issue had been raised so frequently to HHS that, on September 23, 2008, it published a Frequently Asked Question to address questions about pharmacy claims rejected by payers for lack of an individual prescriber NPI (Answer ID 9419) (*https://questions.cms.hhs.gov/app/answers/detail/a_id/9419/~/does-the-national-provider-identifier-(npi)-final-rule-require-individual*).

Due to recurring issues, we believe this scenario described in the 2004 NPI final rule needs to be addressed. Pharmacies are encountering situations where the NPI of a prescribing health care provider needs to be included in the pharmacy claim, but the prescribing health care provider does not have an NPI or has not disclosed it. This situation has become particularly problematic in the Medicare Part D program, as we explain more fully later in this proposed rule.

By way of background, every prescriber has at least one identifier that may be submitted on a pharmacy claim. These identifiers include the NPI, Drug Enforcement Administration (DEA) number, uniform provider identification number (UPIN), or State license number. The Medicare Part D program is an optional prescription drug benefit for all Medicare beneficiaries. Medicare Part D contracts with private companies, called plan sponsors, to administer the benefit through Part D drug plans. In the Medicare Part D program, plan sponsors must submit a prescription drug event (PDE) record to Medicare Part D every time a beneficiary's prescription is filled under the program. Plan sponsors use information from the claim generated by the pharmacy to complete the PDE record, which contains summary information. These PDE records, which currently must contain a prescriber identifier are necessary to support accurate payments to plan sponsors by Medicare Part D.

The use of multiple and invalid prescriber identifiers in the Medicare Part D program has been identified as a concern. In a June 2010 report titled, ''Invalid Prescriber Identifiers on Medicare Part D Drug Claims'' (''June 2010 report''), the HHS Office of the Inspector General (OIG) reported the findings of its review of prescriber identifiers on 2007 Part D PDE records. The OIG reported finding 18.4 million PDE records that contained 527,749 invalid identifiers, including invalid NPIs, DEA registration numbers, and UPINs. Payments by Part D drug plans and enrollees for prescriptions associated with these PDE records totaled $1.2 billion. Prescriber identifiers are valuable Part D program safeguards. These identifiers are the only data on Part D drug claims to represent that licensed practitioners have written prescriptions for Medicare enrollees. Although invalid prescriber identifiers are not an automatic indication of erroneous or fraudulent prescriptions or pharmacy claims, the lack of valid prescriber identifiers on Part D drug claims hampers Medicare's program integrity efforts.

To address these concerns raised by the June 2010 report, in the ''Medicare Program; Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2013 and Other Changes'' final rule (which was filed for public inspection onApril 2, 2012 (hereinafter referred to as April 2012 final rule). CMS requires Part D sponsors to include an active and valid prescriber National Provider Identifier (NPI) on prescription drug event records (PDEs) that they submit to CMS, which will assist the Federal government in fighting possible fraudulent activity in the Part D

program, because prescribers will be consistently and uniformly identified. This policy will not interfere with beneficiary access to needed medications because Part D sponsors must validate the NPI at point of sale, and if this is not possible, permit the prescription to be dispensed and obtain the valid NPI afterwards.''

Pharmacies that contract with Part D sponsors may be involved in obtaining a prescriber's NPI depending on the agreement between the pharmacies and Part D sponsors. Because Part D sponsors and pharmacies generally have no regulatory leverage or other recourse over prescribers who fail or refuse to disclose NPIs, they must resort to using provider information databases to determine if a prescriber has an NPI or contact the prescriber, if known. If a Part D sponsor or network pharmacy is unable to obtain a prescriber NPI for use on the claim and PDE, the reimbursement from Medicare Part D to the sponsor (or alternatively, from the sponsor to the pharmacy depending on the agreement between the parties), could be negatively affected. We seek to address both current and future problems described previously that are presented by prescribers who do not have NPIs or do not disclose them, by proposing an additional requirement for the NPI regulations.

B. Provisions for a Proposed Requirement To Obtain and Use NPIs

We are proposing an additional requirement for organization covered health care providers that have as a member, employ, or contract with, an individual health care provider who is not a covered entity and is a prescriber. Organization health care providers are health care providers that are not individuals. Our proposal would require an organization to require such a prescriber to: (1) obtain an NPI; and (2) to the extent the prescriber writes a prescription while acting within the scope of the prescriber's relationship with the organization, disclose the NPI upon request to any entity that needs it to identify the prescriber in a standard transaction.

Organization covered health care providers would be required to implement the requirement within 180 days after the effective date of the final rule, which would be reflected in 45 CFR 162.404(a)(2) with regulation text stating that an organization covered health care provider must comply with the implementation specifications in 45 CFR 162.410(b). We expect the final rule to be effective on October 1, 2012, in which case covered organization health care providers would have to meet the requirement by April 7, 2013.

The requirement would be reflected in the regulation text in 45 CFR 162.410(b) by adding the following new language. ''An organization covered health care provider that has as a member, employs, or contracts with an individual health care provider who is not a covered entity and is a prescriber, must require such health care provider to: (1) obtain an NPI from the National Plan and Provider Enumeration System (NPPES) and (2) to the extent the prescriber writes a prescription while acting within the scope of the prescriber's relationship with the organization, disclose the NPI upon request to any entity that needs it to identify the prescriber in a standard transaction.''

This proposed requirement represents a narrow exception to the position we took in the 2004 NPI final rule. The 2004 NPI final rule (69 FR 3440), we stated ''[w]e do not consider individuals who are health care providers * * * and who are members or employees of an organization health care provider to be ''subparts'' of those organization health care providers, as described earlier in this section. Individuals who are health care providers are legal entities in their own right. The eligibility for an ''Entity type code 1'' NPI of an individual who is a health care provider and a member or an employee of an organization health care provider is not dependent on a decision by the organization health care provider as to whether or not an NPI should be obtained for, or by, that individual. The eligibility for an ''Entity type code 1'' NPI of a health care provider who is an individual is separate and apart from that individual's membership or employment by an organization health care provider.''

By virtue of this proposed rule, we are still not considering noncovered health care providers that are prescribers to be subparts of organization health care providers, nor are we proposing that they are not legal entities in their own right. Rather, our proposal would close a gap in the NPI rule by virtue of the relationships that covered organization health care providers have with noncovered individual health care providers.

The providers we seek to reach are prescribers who are not required to obtain and disclose an individual NPI under the current NPI regulations. To the best of our understanding, these prescribers are largely hospital-based providers who staff clinics and emergency departments, or otherwise provide on-site medical services, such as medical residents and interns, as well as prescribers in group practices, whose services are billed under a group or ''Entity type code 2'' NPI regardless of whether they have obtained an individual, or ''Entity type code 1,'' NPI. These prescribers are using the ''Entity type code 2'' to identify themselves on prescriptions, or an other or no identifier, which does not identify them as individuals. We believe this proposal describes the various relationships that organization health care providers have with such prescribers, and that the relationship is one in which organizations can exercise control over these prescribers and require them to do something.

For instance, a physician or dentist who prescribes may be a member of a group practice. As noted in the 2004 NPI final rule (69 FR 3439 and 3440), ''group health care providers are entities composed of one or more individuals (members), generally created to provide coverage of patients' needs in terms of office hours, professional backup and support, or range of services resulting in specific billing or payment arrangements.'' For purposes of this rule, we consider group health care providers to be organization health care providers.'' By virtue of the contractual or other relationship between a group and a member, a group can require the member to do certain things, such as work certain on-call hours. Likewise, a resident or nurse practitioner who performs medical services at a hospital can be required to do certain things, such as to abide by medical staff by-laws and hospital policies and procedures, as a hospital employee or contractor. This proposed rule does not specify how organization covered health care providers should impose the requirement to obtain an NPI and disclose it on prescribers. Organization covered health care providers may have a number of alternatives by which they may accomplish this, for example, through a written agreement, an employment contract, or a directive to abide by the organization health care provider's policies and procedures.

The requirement for a prescriber to disclose his or her NPI would apply for prescriptions written pursuant to the prescriber's relationship with the covered health care organization provider. For example, if a physician works for two group practices, A and B, group practice A would be required to require the physician to disclose his or her NPI for pharmacy claims that are for prescriptions written by the prescriber for a patient of group practice A, and group practice B would be required to do the same for pharmacy claims for

prescriptions written by the prescriber for a patient of that group practice.

We considered expanding our proposal to organization covered health care providers that grant clinical privileges to individual health care providers who are not covered entities and are prescribers, so that we would be certain to encompass hospital residents and interns under our proposal (to the extent they are not otherwise required to obtain Type 1 NPIs). However, it is our belief such prescribers will be encompassed under our proposal as drafted, as we further believe our proposal would encompass virtually all prescribers who are not currently required to obtain and disclose an individual NPI. Exceptions may include, by way of example, a self-employed physician who does not bill insurance plans and does not have a member, employee or contractual relationship with an organization covered health care provider (or has one with a noncovered organization health care provider), such as a psychiatrist or plastic surgeon who only accepts cash from patients. Even with respect to these prescribers, we hope this rule highlights the importance of voluntarily obtaining NPIs to facilitate their patients' access to prescribed items. We seek comment regarding the extent to which residents, interns, and any other prescribers would not be reached under our proposal and any alternative approach that would encompass them.

We believe this proposal furthers several goals and purposes identified in the Act. First, the statutory purpose of the Administrative Simplification provisions of HIPAA (see section 261 of the Act (42 U.S.C. 1320d note)) is,

> To improve the Medicare program under title XVIII of the Social Security Act, the Medicaid program under title XIX of such Act, and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of uniform standards and requirements for the electronic transmission of certain health information and to reduce the clerical burden on patients, health care providers, and health plans.

In accord with this statutory purpose, our proposal would improve the Medicare program by virtually ensuring the availability of an NPI as a prescriber identifier on pharmacy claims in the Part D program because virtually all prescribers would have to obtain an NPI and disclose it to entities that need it for use in standard transactions. That in turn would support program integrity efforts described in the April 2012 final rule noted previously which requires Part D sponsors to submit PDEs that contain only individual NPIs as prescriber identifiers, effective January 1, 2013. As noted in the April 2012 final rule, ''[w]hen multiple prescriber identifiers, not to mention dummy or invalid identifiers, are used, authorities must take an additional step in their data analysis before even achieving a refined data set to use for further analysis to identify possible fraud. For example, having to cross-reference multiple databases that update on different schedules to be certain of the precise prescribers involved when multiple identifiers were used, would necessitate several additional steps of data pre-analysis and also would introduce potential errors in correctly matching prescribers among databases.''

Invalid identifiers are generally those that do not appear as current in any prescriber identifier registry. Dummy or default identifiers have never appeared in any prescriber identifier registry but have been used successfully on pharmacy claims in place of valid prescriber identifiers (for instance, when the prescriber's NPI was not available), because they met the length and format requirements of a prescriber identifier. Default identifiers present additional challenges to authorities, since the actual prescription must be researched to identify the prescriber. Valid prescriber identifiers are essential to conducting claims analyses to identify aberrant claims prescribing patterns that may indicate fraudulent activity, such as drug diversion schemes or billing for prescription drugs not provided, which includes circumstances with active prescriber participation and those involving forged prescriptions. Improving the accuracy and dependability of the prescriber identifier on Part D claims and PDEs, improves the ability to identify fraud and, in turn, protects and improves the Medicare program.

This proposal would further improve the Medicare program by nearly eliminating the instances in which Part D sponsors' reimbursement (or possibly their network pharmacies' reimbursement, depending on the contractual relationship between the sponsors and the pharmacies) would be negatively impacted due to the actions of prescribers with whom they may have no business relationship. Part D sponsors would be expected to price any measurable expectation of financial risk, if any, due to nonreimbursement by CMS into their Part D bids, thus possibly increasing premiums and subsidies paid under the program. This proposal would make such action by Part D sponsors unnecessary by virtually ensuring the availability of prescriber NPIs.

This proposal also accords with the purpose of HIPAA as amended by the Affordable Care Act. Section 1104(a)(2) of the Affordable Care Act revised the statutory purpose of HIPAA Administrative Simplification by adding, at the end, that its purpose is to ''reduce the clerical burden on patients, health care providers, and health plans.'' To the extent pharmacies only have to accept one identifier—the NPI—rather than four possible identifiers from prescribers for the majority of their claims, the administrative burden on all parties involved in the processing and payment of these claims would be lessened. Pharmacies and payers would no longer have to cross-check provider identifier databases to determine if the prescriber had an NPI when an alternate identifier was used, or contact the prescriber. Moreover, pharmacies and prescribers would no longer have to respond to inquiries from payers regarding the existence of an NPI when an alternate prescriber identifier was used.

The proposal is also supported by section 1173(a)(3) of the Act, which requires the transaction standards adopted by the Secretary to accommodate the needs of different types of health care providers. Our proposal would accommodate the needs of pharmacies, a type of health care provider, by ensuring that a prescriber NPI is available to them when needed for their claims and reducing the instances in which they must cross-reference provider information databases or research a prescription. Similarly, section 1173(b)(1) of the Act states that,

> [t]he Secretary shall adopt standards providing for a standard unique health identifier for each individual, employer, health plan, and health care provider for use in the health care system. In carrying out [this requirement] for each health plan and health care provider, the Secretary shall take into account multiple uses for identifiers and multiple locations and specialty classifications for health care providers.

Our proposal takes into account the particular needs of pharmacies by addressing a problem they have under HIPAA.

While some prescribers will have to apply to obtain an NPI under this proposed requirement, the NPI is free of charge and requires only the completion of a three-page application form that seeks primarily identifying and location information. Thus, we believe the reduction in administrative burden that will be achieved by our proposal outweighs the minimal burden placed on prescribers who will have to obtain NPIs.

The 2004 NPI final rule, as noted previously, foretold the issues that could arise if noncovered health care providers did not obtain NPIs, and therefore encouraged them to do so. The preamble of the 2004 NPI final rule stated that disclosing NPIs to entities for use in standard transactions will greatly enhance the efficiency of health care transactions throughout the health care industry, and that the absence of NPIs when required in those claims by the implementation specifications may delay preparation or processing of those claims, or both. Health care providers responded by obtaining NPIs in large numbers even when not required to, and we believe the vast majority of prescribers already have NPIs. CMS data shows that approximately 90 percent of Medicare Part D claims as reported in PDEs currently submitted contain valid prescriber NPIs even though alternate prescriber IDs are permitted at this time. But, while the vast majority of Medicare Part D claims contain individual NPIs, 10 percent do not. This proposal would help ensure this last 10 percent is addressed. After discussions with representatives of the provider data industry, we estimate there are approximately 1.4 million active prescribers in the United States, of which approximately 160,000 do not have an NPI. It is these prescribers who would have to obtain an NPI if this rule is finalized as proposed.

C. Effective and Compliance Dates

We propose that the date by which an organization covered health care provider must comply is 180 days after the effective date of the final rule. In other words, if the final rule is effective on October 1, 2012, then by April 7, 2013, organization covered health care providers that have a prescriber as a member, employ, or contract with a prescriber who is not a covered entity, must require him or her to (1) obtain an NPI and; (2) to the extent the prescriber writes a prescription while acting within the scope of the prescriber's relationship with the organization, to disclose the NPI upon request to any entity that needs it to identify the prescriber in a standard transaction.

IV. Proposed Change to the Compliance Date for ICD–10–CM and ICD–10–PCS

A. Background

As discussed in section I. of this proposed rule, the final rule adopting ICD–10–CM and ICD–10–PCS (collectively, ''ICD–10'') as HIPAA standard medical data code sets was published in the **Federal Register** on January 16, 2009 (74 FR 3328) (the ''ICD–10 final rule''). The ICD–10 final rule requires covered entities to use ICD–10 beginning October 1, 2013.

In late 2011 and early 2012, three issues emerged that led the Secretary to reconsider the compliance date for ICD–10: (1) The industry transition to Version 5010 did not proceed as effectively as expected; (2) providers expressed concern that other statutory initiatives are stretching their resources; and (3) surveys and polls indicated a lack of readiness for the ICD–10 transition.

1. The Transition to Version 5010 and Its Effect on ICD–10 Readiness

Concurrent with the publication of the ICD–10 final rule, HHS published in the **Federal Register** the Modifications final rule which set January 1, 2012 as the compliance date for Version 5010 (74 FR 3296). As the industry approached the January 1, 2012 Version 5010 compliance date, a number of implementation problems emerged, some of which were unexpected. These included—

- Trading partners were not ready to test the Version 5010 standards due to vendor delays in delivering and installing Version 5010-compliant software to their provider clients;
- Version 5010 errata were issued to correct typographical mistakes and other maintenance issues that were discovered as the industry began its internal testing of the standards, which delayed vendor delivery of compliant products and external testing;
- Differences between address requirements in the ''provider billing address'' and ''pay to'' address fields adversely affected crossover claims processing;
- Inconsistent payer interpretation of standard requirements at the front ends of systems resulted in rejection of claims, as well as other technical and standard misinterpretation issues;
- Edits made in test mode that were later changed when claims went into production without adequate notice of the change to claim submitters; and
- Insufficient end to end testing with the full scope of edits and business rules in place to ensure a smooth transition to full production.

Given concerns that industry would not be compliant with the Version 5010 standards by the January 1, 2012 compliance date, we announced on November 17, 2011 that we would not initiate any enforcement action against any covered entity that was not in compliance with Version 5010 until March 31, 2012, to enable industry adequate time to complete its testing and software installation activities. On March 15, 2012, this date was extended an additional 3 months, until June 30, 2012.

The ICD–10 final rule set October 1, 2013 as the compliance date, citing industry testimony presented to NCVHS and many of the over 3,000 industry comments received on the ICD–10 proposed rule. The analysis in the ICD–10 final rule with regard to setting a compliance date emphasized the interdependency between implementation of ICD–10 and Version 5010, and the need to balance the benefits of ICD–10 with the need to ensure adequate time for preparation and testing before implementation. As noted in the ICD–10 final rule, ''[w]e cannot consider a compliance date for ICD–10 without considering the dependencies between implementing Version 5010 and ICD–10. We recognize that any delay in attaining compliance with Version 5010 would negatively impact ICD–10 implementation and compliance.'' (74 FR 3334) Based on NCVHS recommendations and industry feedback received on the proposed rule, we determined that ''24 months (2 years) is the minimum amount of time that the industry needs to achieve compliance with ICD–10 once Version 5010 has moved into external (Level 2) testing.'' (74 FR 3334) In the ICD–10 final rule, we concluded that the October 2013 date provided the industry adequate time to change and test systems given the 5010 compliance date of January 1, 2012.

As implementation of ICD–10 is predicated on the successful transition of industry to Version 5010, we are concerned that the delays encountered in Version 5010 have affected ICD–10 planning and transition timelines.

2. Providers have Expressed Concern That Other Statutory Initiatives Are Stretching Their Resources

Since publication of the ICD–10 and Modifications final rules, a number of other statutory initiatives were enacted, requiring health care provider compliance and reporting. Providers are concerned about their ability to expend limited resources to implement and participate in the following initiatives that all have similar compliance timeframes.

The EHR Incentive Program was established under the Health Information Technology for Economic and Clinical Health (HITECH) Act, a part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). Medicare and Medicaid incentive payments are available to eligible professionals and hospitals for adopting electronic health record (EHR)

technology and demonstrating meaningful use of such technology. Eligible professionals and hospitals that fail to meaningfully use EHR technology could be subject to Medicare payment adjustments beginning in FY 2015. The Physician Quality Reporting System is a voluntary reporting program that provides incentives payments to eligible professionals and group practices that satisfactorily report data on quality measures for covered Physician Fee Schedule services furnished to Medicare Part B Fee-for-Service beneficiaries. The eRx Incentive Program is a reporting program that uses a combination of incentive payments and payment adjustments to encourage electronic prescribing by eligible professionals. Beginning in 2012 through 2014, eligible professionals who are not successful electronic prescribers are subject to a payment adjustment. Finally, section 1104 of the Affordable Care Act imposes additional HIPAA Administrative Simplification requirements on covered entities, shown in Chart 1.

CHART 1: HIPAA COMPLIANCE DATES FROM THE AFFORDABLE CARE ACT

Covered entity compliance date	HIPAA requirements from the Affordable Care Act
January 1, 2013	• Operating rules for eligibility for a health plan and health care claim status transactions.
December 31, 2013	• Health plan compliance certification requirements for health care electronic funds transfers (EFT) and remittance advice, eligibility for a health plan, and health care claim status transactions.
January 1, 2014	• Standards and operating rules for health care electronic funds transfers (EFT) and remittance advice transactions.
December 31, 2015	• Health plan compliance certification requirements for health care claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, health care claims attachments, and referral certification and authorization transactions.
January 1, 2016	• Standard for health care claims attachments. • Operating rules for health care claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, referral certification and authorization transactions
Proposed October 1, 2014.	• Unique health plan identifier.

3. Current State of Industry Readiness for ICD–10

It is crucial that all segments of the health care industry transition to ICD–10 at the same time because the failure of any one industry segment to successfully implement ICD–10 has the potential to affect all other industry segments. Ultimately, such failure could result in returned claims and provider payment delays that disrupt provider operations and negatively impact patient access to care.

In early 2012, it became evident that sectors of the health care industry would not be prepared for the October 1, 2013 ICD–10 compliance date. Providers in particular voiced concerns about their ability to meet the ICD–10 compliance date as a result of a number of factors, including obstacles they experienced in transitioning to Version 5010 and the other initiatives that stretch their resources. A CMS survey conducted in November and December 2011 (hereinafter referred to as the CMS readiness survey) found that 26 percent of providers surveyed indicated that they are at risk for not meeting the October 1, 2013 compliance date.[4]

In February 2012, the Workgroup for Electronic Data Interchange (WEDI) conducted a survey on ICD–10 readiness, hereinafter referred to as the WEDI readiness survey.[5] WEDI received responses from more than 2,600 providers, health plans, and vendors showing that the industry is uncertain about its ability to meet ICD–10 compliance milestones. Data from the WEDI survey indicated that nearly 50 percent of the provider respondents did not know when they would complete their impact assessment.[6] In addition, the survey found that approximately 33 percent of providers did not expect to begin external testing in 2013, while approximately 50 percent of providers did not know when testing would occur.[7]

Other segments of the industry, such as health plans and software vendors, also reported that they would benefit from additional time for implementation. While the CMS ICD–10 Implementation Guide recommends that payers begin external testing in the fall of 2012, the WEDI readiness survey found that most health plans do not expect to begin external testing until 2013. In addition, about 50 percent of vendors are not yet halfway through development of ICD–10 products. Vendor delays in product development can result in provider and payer delays in implementing ICD–10.

Given the evidence that segments of the health care industry will likely not meet the October 1, 2013 compliance date, the reasons for that likelihood, and the likelihood that a compliance date delay would significantly improve the successful and concurrent implementation of ICD–10 across the health care industry, we are proposing to extend the compliance date for ICD–10.

B. One-Year Delay

We are proposing to extend the compliance date for ICD–10 for 1 year, from October 1, 2013 to October 1, 2014. This change would be reflected in the regulations at 45 CFR 162.1002. While we considered a number of alternatives for the delay, as discussed in the Impact Analysis of this proposed rule, we believe a 1-year delay would provide sufficient time for small providers and small hospitals to become ICD–10 compliant and would be the least financially burdensome to those who had planned to be compliant on October 1, 2013.

To determine the new compliance date for ICD–10, we balanced the need for additional time for small providers and small hospitals to become compliant with the financial burden of

[4] ''Version 5010 and ICD–10 Readiness Assessment: Conducted among Health Care Providers, payers, and Vendors for the Centers for Medicare & Medicaid Services (CMS),'' December, 2011, Prepared by CMS. Survey responses received from 404 health care providers, 101 payers, and 90 vendors.

[5] ''Survey: ICD–10 Brief Progress,'' February 2012, conducted by the Workgroup for Electronic Data Interchange (WEDI).

[6] An impact assessment for ICD–10 is performed by a covered entity to determine business areas, policies, processes and systems, and trading partners that will be affected by the transition to ICD–10. An impact assessment is a tool to aid in planning for implementation.

[7] For providers, the CMS ICD–10 Implementation Guide recommends that they complete their impact assessments by Winter 2012 and begin external testing in the Fall of 2012. CMS provides implementation guides for providers, payers, and vendors to assist with the transition from ICD–9 to ICD–10 codes. It is a resource for covered entities providing detailed information for planning and executing the ICD–10 transition process. CMS recommends industry use the guide as a reference.

a delay on entities that have developed budgets and planned process and system changes around the October 1, 2013 compliance date. Entities that have started planning and working toward an October 1, 2013 implementation would incur costs by having to reassess and adjust implementation plans and maintain contracts to manage the transition beyond October 1, 2013. We concluded that a 1-year delay would strike a reasonable balance by providing sufficient time for small providers and small hospitals to become compliant and would minimize the financial burden on those entities that have been actively planning and working toward being compliant on October 1, 2013.

Data from two surveys helped us in our determination to propose 1 additional year for compliance. First, the CMS readiness survey revealed that 26 percent of providers reported that they are at risk for non-compliance on October 1, 2013, citing insufficient time as one risk factor.[8] Second, an informal survey conducted by Edifecs, a health care IT company, of 50 senior health care officials representing a wide range of organizations found that thirty-seven percent of respondents stated that a 1-year delay would be beneficial to them.[9]

While we considered a 2-year delay, we determined that the financial burden could be too significant for those entities that would otherwise be ready on October 1, 2013. As discussed further in the Impact Analysis of this proposed rule, we estimate it will cost health plans up to an additional 30 percent of their current ICD–10 implementation budgets for a 1-year delay and therefore, we assume that a 2-year delay would be at least double the cost of a 1-year delay; that is, a 2-year delay would cost at least $13 billion for all commercial and government health plans. In addition to financial concerns, industry has suggested that a 2-year delay may stop the implementation of ICD–10 completely. The Edifecs poll found that nearly 70 percent of respondents believe that a 2-year delay would be either ''potentially catastrophic or cause an unrecoverable failure,'' and that ''a delay of longer than a year will likely freeze budgets, slow down schedules, or stop work altogether.'' [10] Only 2 percent of Edifecs respondents said there would be a benefit to a 2-year delay.

Finally, in its March 2, 2012 letter to the Secretary on a possible delay of the ICD–10 compliance date, the NCVHS urged that any delay should be announced as soon as possible and should not be for more than 1 year. The NCVH made this recommendation in consideration of its belief that a delay would cause a significant financial burden ''that accrues with each month of delay.'' [11]

We believe that a 1-year delay would benefit all covered entities, even those who had are actively planning and striving for a 2013 implementation. A 1-year delay would enable the industry as a whole to test more robustly and implement simultaneously, which would foster a smoother and more coordinated transition to ensure the continued and uninterrupted flow of health care claims and payment. Therefore, we are proposing that covered entities must comply with ICD–10 on October 1, 2014.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment on a collection of information requirement submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency.
- The accuracy of the agency's estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

A. Information Collection Requirements (ICRs) Regarding HPID/OEID on Health Plan and Other Entities (§ 162.512 and § 162.514)

In order to apply for an HPID or OEID, there is an initial one-time requirement for information from health plans that seek to obtain an HPID and other entities that elect to obtain an OEID. In addition, health plans and other entities may need to provide updates to information.

With respect to the collection of information requirements for the HPID, it is important to bear in mind that: (1) Systems modifications necessary to implement the HPID/OEID may overlap with the other systems modifications needed to implement other Affordable Care Act standards; (2) some modifications may be made by contractors such as practice management vendors, in a single effort for a multitude of affected entities; and (3) identifier fields are already in place and HPID/OEID will, in many instances, simply replace the multiple identifiers currently in use.

Under this proposed rule, a CHP, as defined in 45 CFR 162.103, will have to obtain an HPID from a centralized electronic Enumeration System. A SHP, as defined in 45 CFR 162.103, would be eligible but not required to obtain an HPID. If a SHP obtains an HPID, it would apply either directly to the Enumeration System or its CHP would apply to the Enumeration System on its behalf. Other entities may apply to obtain an OEID from the Enumeration System. Health plans that obtain an HPID and other entities that obtain an OEID would have to communicate any changes to their information to the Enumeration System within 30 days of the change. A covered entity must use an HPID to identify a health plan in a standard transaction.

We estimate that there will be up to 15,000 entities that will be required to, or will elect to, obtain an HPID or OEID. We based this number on the following data in Chart 2.

CHART 2: NUMBER AND TYPE OF ENTITIES THAT MAY OBTAIN AN HPID OR OEID

Type of entity	Number of entities
Self insured group health plans	12,000*
Health insurance issuers, individuals and group health markets, HMOs, including companies offering Medicaid managed care	1,827**

[8] ''Version 5010 and ICD–10 Readiness Assessment: Conducted among Health Care Providers, payers, and Vendors for the Centers for Medicare & Medicaid Services (CMS),'' December, 2011, Prepared by CMS.

[9] ''Survey: Industry Reaction to Potential Delay of ICD–10—A Delay will be Costly, but Manageable * * * Unless it's more than a Year,'' February 27, 2012, conducted by Edifecs. The survey's participants included commercial payers (25%), Blue Cross Blue Shield plans (25%), healthcare providers (18%), government entities such as State Medicaids (9%), medical claim clearinghouses (6%), and other healthcare industry organizations (17%).

[10] Edifecs poll, 2012.

[11] Letter to Kathleen G. Sebelius, Secretary, U.S. Department of Health and Human Services, from the National Committee of Vital and Health Statistics (NCVHS), ''Possible Delay of Deadline for Implementation of ICD–10 Code Sets,'' March 2, 2012.

CHART 2: NUMBER AND TYPE OF ENTITIES THAT MAY OBTAIN AN HPID OR OEID—Continued

Type of entity	Number of entities
Medicare, Veterans Health Administration (VHA), Indian Health Service (IHS), TRICARE, and State Medicaid programs	60
Clearinghouses and Transaction Vendors	162***
Third Party Administrators	750 ****
Total	~15,000

*''Report to Congress: Annual Report on Self –Insured Group Health Plans,'' by Hilda L. Solis, Secretary of Labor, March 2011.

** ''Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment, 2011 **Federal Register** (Vol. 76), July, 2011,'' referencing data from *www.healthcare.gov.*

*** Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards; Proposed Rule *http://edocket.access.gpo.gov/2008/pdf/E8-19296.pdf,* based on a study by Gartner.

**** Summary of Benefits and Coverage and the Uniform Glossary; Notice of Proposed Rulemaking *http://www.gpo.gov/fdsys/pkg/FR-2011-08-22/pdf/2011-21193.pdf.*

Note that the number of health plans that will be required, or have the option, to obtain an HPID is considerably larger than the number of health plans for which we used in the calculations in section V. of this proposed rule. This is because self-insured health plans are required to obtain HPIDs if they meet the requirements of a Controlling health plan under this proposed rule. However, we assume that very few self-insured group health plans conduct standard transactions themselves; rather, they typically contract with TPAs or insurance issuers to administer the plans. Therefore, there will be significantly fewer health plans that use HPIDs in standard transactions than health plans that are required to obtain HPIDs, and only health plans that use the HPIDs in standard transactions will have direct costs and benefits.

To comply with these requirements, health plans and other entities will complete the appropriate application/update form online through the Enumeration System. This online form serves two purposes: applying for an identifier and updating information in the Enumeration System.

Most health plans and other entities will not have to furnish updates in a given year. However, lacking any available data on rate of change, we elected to base our assumptions on information in the Medicare program that approximately 12.6 percent of health care providers provide updates in a calendar year. We anticipate this figure would be on the high end for health plans and other entities. Applying this assumption, we can expect that 1,764 health plans will need to complete and submit the HPID application update form in a given year.

Applying for HPID or OEID is a one-time burden. In future years, this burden would apply only to new health plans and as an option for other entities as described in the section V of this proposed rule. From 2013 to 2018, industry trends indicate that the number of health plans will remain constant, or even decrease.[12] We assume that the number of new health plans will be small, and that the costs will be negligible. Therefore, our calculations reflect that there will be no statistically significant growth in the number of health plans or other entities and we calculate zero growth in new applications.

We estimate it will take 30 minutes to complete the application form and use an hourly labor rate of approximately $23/hour, the average wage reported for professional and business and services sector, based on data from the Department of Labor, Bureau of Labor Statistics, June 2011, ''Average hourly and weekly earnings of production and nonsupervisory employees (1) on private nonfarm payrolls.'' (*ftp://ftp.bls.gov/pub/suppl/empsit.ceseeb11.txt*). This represents a unit cost of $11.50 per application for both HPID and OEID.

Because our initial estimate for the number of applications for OEID is small (162 Clearinghouses and Transaction Vendors + 750 TPAs = 912) and the costs negligible, we do not include separate calculations. We have elected instead to offer the unit cost figure as a baseline if commenters demonstrate that the universe of applications for OEID is likely to expand significantly.

To further reduce burden and plan for compliance with the Government Paperwork Elimination Act, we propose accepting electronic applications and updates over the internet. We explicitly solicit comment on how we might conduct this activity in the most efficient and effective manner, while ensuring the integrity, authenticity, privacy, and security of health plan and other entity information.

B. ICRs Regarding Implementation Specifications: Health Care Providers (§ 162.410)

We are proposing to put an additional requirement on covered organization health care providers that employ, have as members, or have contracts with individual health care providers who are not covered entities but who are prescribers. By 180 days after the effective date of the final rule, such organizations must require such health care providers: (1) To obtain, by application if necessary, an NPI from the National Plan and Provider Enumeration System (NPPES); (2) to the extent the prescriber writes a prescription while acting within the scope of the prescriber's relationship with the organization, disclose his or her NPI, upon request to any entity that needs the NPI to identify the prescriber in a standard transaction.

The burden associated with the addition to the requirements of § 162.410 as discussed in this proposed rule is the one-time application burden, and later update burden as necessary, on prescribers who do not already have an NPI, who have a relationship with a covered health care provider, and who must be identified in a standard transaction. We estimate that there are approximately 1.4 million prescribers in the United States, of which approximately 160,000 do not have an NPI. It is these prescribers who would have to obtain an NPI if this rule is finalized as proposed. Based on the estimations in the NPI final rule, we estimate that it will take 20 minutes to complete an application for an NPI and use an hourly labor rate of approximately $23/hour, the average wage reported for professional and business and services sector, based on data from the Department of Labor, Bureau of Labor Statistics, June 2011, ''Average hourly and weekly earnings of production and nonsupervisory employees (1) on private nonfarm payrolls.'' (*ftp://ftp.bls.gov/pub/suppl/empsit.ceseeb11.txt*). Additionally, we have calculated an increase of 3 percent for labor costs for each of the years 2013 through 2016 for an hour rate of approximately $24/hour for year 2013.

Table 4 shows the estimated annualized burden for the HPID and NPI PRA in hours.

[12] *See* Robinson, James C., ''Consolidation and the Transformation of Competition in Health Insurance,'' Health Affairs, 23, no.6 (2004):11–24; ''Private Health insurance: Research on Competition in the Insurance Industry,'' U.S. Government Accountability Office (GAO), July 31, 2009 (GAO–09–864R); American Medical Association, ''Competition in Health Insurance: A Comprehensive Study of US Markets,'' 2008 and 2009.

TABLE 4—ANNUAL INFORMATION COLLECTION BURDEN*

Regulation section	OMB control No.	Respondents	Responses	Burden per response (hours)	Total annual burden	Hourly labor cost of reporting ($)	Total labor cost	Total capital/ maintenance costs ($)	Total cost ($)
§ 162.410	0938–New	160,000	160,000	0.33	52,800	24	1,267,200	0	1,267,200
§ 160.512	0938–New	15,000	15,000	0.50	7,500	24	180,000	0	180,000
Total		175,000	175,000		60,300				1,447,200

*2013 dollars.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced previously, access our Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326. If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, CMS–0040–P Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov*

VI. Regulatory Impact Analysis

A. Need for Regulatory Action

1. NPI for Non-Covered Health Care Providers

The compliance date for use of the NPI by health care providers was May 23, 2007. At this point, we believe there are 160,000 health care providers who do not already have an NPI. For these health care providers, obtaining an NPI is not a burdensome endeavor, as it is free of charge and takes approximately 20 minutes to file an application to obtain one. However, the availability of these additional prescriber NPIs will greatly assist entities who need them for use in standard transactions, including for the Medicare Part D program, as described previously. See section V.B. of this proposed specifically for a summary of the time costs associated with obtaining an NPI. We have included the costs associated with obtaining an NPI detailed in section V.B in the summary Tables 32 and 33 of the RIA. Because there are few health care providers who do not already have an NPI, we estimate that the addition to the NPI requirements will have little impact on health care providers and on the health industry at large. We solicit comment on this.

2. HPID

As noted in section I of this proposed rule, health plans and other payers are identified in a number of different ways in covered transactions by the health care industry. Health plan identifiers are currently used to facilitate routing of covered transactions or, in other words, ''to determine either where the standard electronic transactions are to be sent if the receiver is [a] health plan or from where they came from if the sender is a health plan.''[13] The primary function of the HPID proposed in this rule is to create a standard data element for covered entities to identify health plans in HIPAA covered transactions.

Different segments in each HIPAA standard transaction require an identifier to identify the payer or sender/recipient of a particular transaction. (See Table 1 for a list of HIPAA standard transactions, and Table 3 for an example of a segment that requires a payer identifier.) Currently, when a covered entity, for business reasons, inputs an identifier that identifies a health plan into a transaction segment, the identifier is proprietary or based on the NAIC code, EIN, or TIN of the health plan or other entity. Some health plans use multiple identifiers to identify themselves in transactions.

Standardization of the health plan identifier is expected to ameliorate some routing issues. It is expected to clarify, to some extent, the sender or recipient of standard transactions, when the sender or recipient is a health plan. For instance, a health plan that uses different identifiers to identify itself in covered transactions creates inefficiencies and potential confusion among its trading partners. Participating health care providers that are its trading partners, for instance, could be required to use different identifiers for different transactions, even to identify the same health plan. If the HPID is adopted, such a health plan would likely use one identifier, thereby making it easier for the covered health care provider to identify the health plan as the sender or recipient of the standard transaction.

By ameliorating routing issues, the HPID and OEID will add consistency to identifiers, which will provide for a higher level of automation, particularly for provider processing of the X12 271 (eligibility response) and X12 835 (remittance advice). In the case of the X12 835, the HPID and OEID will allow reconciliation of claims with the claim payments to be automated at a higher level.

However, according to testimony and industry studies, the most significant value of the HPID and what is being proposed as the OEID is that they will serve as foundations for other regulatory and industry initiatives. The implementation of HPID, in and of itself, may not provide significant monetary savings for covered entities, with the exception of providing time savings by immediately solving certain routing issues. Instead, financial benefits are expected to be realized mostly downstream, when the HPID is used in coordination with other regulatory and industrial administrative simplification initiatives. Testimony from the July 19, 2010 NCVHS hearing reinforced this idea.

As an analogy, the standardization of the width of railroad tracks does not, in and of itself, result in monetary savings. However, such standardization has ensured connectivity between diverse railroad systems that has resulted in time and cost savings in the movement of freight across the country. In a like manner, standardization of a single data element in health care transactions does not, in and of itself, produce substantial time or cost savings. However, the diverse identifiers currently used by multiple health plans are akin to the different track widths used by various railroad systems. Like the standardization of railroad track widths, the HPID serves as a foundation for more efficient and cost effective transmission of health care information.

[13] J. Daley, ''Testimony before the NCVHS Subcommittee on Standards on the National Health Plan Identifier on behalf of America's Health Insurance Plans and the Blue Cross and Blue Shield Association,'' July 19, 2010, *http://www.ncvhs.hhs.gov.*

In an industry white paper, one health care provider association echoed the foundational importance of the HPID and stated that a standard identifier for health plans is ''viewed by many as a crucial step toward one-stop, automated billing.'' In the same paper, that association stated that, in order to begin the movement toward automated billing, standard identifiers were needed for more entities with ''payer'' function than just ''health plans,'' including entities with primary financial responsibility for paying a particular claim, entities responsible for administering a claim, entities that have the direct contract with the health care provider, and secondary or tertiary payers for the claim.[14] The association went on to contend that fee schedules and plan and product types would need to be identified with this health plan identifier.

In this rule, we are not proposing that the HPID or the OEID contain intelligence that would include fee schedules or benefit plans or product types. However, we are proposing that entities other than health plans may get an OEID. We view the adoption of the HPID and the suggested option of an OEID as foundations for the ''one-stop, automated billing'' that this professional association advocated.

This impact analysis will take these foundational benefits of HPID and, for the sake of illustration, attribute some of the monetary savings from the downstream results to implementation and use of the HPID. It is important to view these estimates as an attempt to illustrate the foundational effect of the HPID rather than as a precise budgetary prediction.

3. Need for a Delay in Implementation of ICD–10, and General Impact of Implementation

The ICD–10 final rule requires covered entities to comply with ICD–10 on October 1, 2013. The provisions of this proposed rule would change the compliance date to October 1, 2014.

The process of transitioning from ICD–9 to ICD–10, if not carefully coordinated, poses significant risk to provider reimbursement. Should health care entities' infrastructure not be ready or thoroughly tested, providers may experience returned claims and delayed payment for the health care services they render to patients. There has been mounting evidence over the past several months that a significant percentage of providers believe they do not have sufficient resources or time to be ready to meet the October 1, 2013 ICD–10 compliance deadline.

Two distinct types of issues are implicated by a transition of this magnitude, and the costs associated with both might be avoided if the ICD–10 compliance date is delayed as proposed in this rule. First, there may be entities that have not readied their systems, personnel, or processes to achieve compliance by October 1, 2013. For example, vendor practice management and/or other software must be updated to process claims with ICD–10 codes, then installed and tested internally. Likewise, staff needs to be trained and systems and forms prepared for the new code set. In a CMS survey conducted in November and December 2011 (hereinafter referred to as the CMS readiness survey), 25% of providers surveyed indicated that they are at risk for not meeting the October 1, 2013 compliance date.[15] In February 2012, the Workgroup for Electronic Data Interchange (WEDI) conducted a survey on ICD–10 readiness (WEDI readiness survey) that indicated that nearly 50 percent of the 2,140 provider respondents did not know when they would complete their impact assessment.[16] An illustration of what could occur if elements of industry are not prepared for the transition to ICD–10 can be seen by the January 1, 2012 transition to Version 5010, where we have heard from several provider organizations reporting numerous practices have not been paid for long periods due to the Version 5010 transition.

Second, beyond ''readiness'' and ''compliance,'' there are issues that will arise if trading partners have not thoroughly tested ICD–10. ''Readiness'' is only a self-reported indicator of the potential success of an ICD–10 transition and can be unreliable; we know this from similar industry surveys done for Version 5010 that indicated high levels of readiness only to find multiple issues once claims were submitted in production mode. The other indicator of success is the quality and robustness of testing. Clearinghouses cannot assist in the ICD–10 transition as they are unable to correct coding issues without viewing the underlying documentation, which is not a typical clearinghouse role. In general, only a provider can change/modify a code, so it is incumbent upon providers to ensure a successful ICD–10 conversion. In many cases, providers' success will be predicated upon timely vendor delivery of ICD–10-compliant software, and coordination must be developed with payer systems and new fee schedules. Providers' practice management systems (PMS) must be programmed to process ICD–10 codes, and, with many providers transitioning to EHRs, there needs to be a well-tested interface between electronic health records and the PMS.

In an informal poll conducted by Edifecs (hereinafter referred to as the Edifecs poll), a health care IT company, with responses from 50 senior health care officials representing a wide range of organizations, 37 percent of respondents stated that a 1-year delay would be beneficial for them.[17] According to the Edifecs analysis, ''For those organizations that have the determination to keep moving forward as if the delay had never been announced, it may end up being a true gift on the testing front.''[18]

In the CMS readiness survey, 75 percent of providers surveyed cited the lack of time and/or staff as a barrier to implementing ICD–10 on time. The survey also indicated that given just 3 additional months, an additional 14 percent of providers would be able to achieve compliance by December 31, 2013. This indicates that a delay would be helpful in overcoming one of the major obstacles to compliance—lack of time—and that a delay of a year would enable providers to achieve not only ''readiness'' in terms of system interoperability, but also give the time for more thorough testing of ICD–10.

B. Introduction

We have examined the impacts of this notice of proposed rulemaking as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354) (as amended by the Small Business

[14] ''National Health Plan Identifier White Paper,'' prepared by the American Medical Association (AMA) Practice Management Center (PMC), September 22, 2009.

[15] ''Version 5010 and ID–10 Readiness Assessment: Conducted among Health Care Providers, payers, and Vendors for the Centers for Medicare & Medicaid Services (CMS),'' December, 2011, Prepared by CMS.

[16] ''Survey: ICD–10 Brief Progress,'' February 2012, conducted by the Workgroup for Electronic Data Interchange (WEDI).

[17] ''Survey: Industry Reaction to Potential Delay of ICD–10—A Delay will be Costly, but Manageable * * * Unless it's more than a Year,'' February 27, 2012, conducted by Edifecs. The survey's participants included commercial payers (25%), Blue Cross Blue Shield plans (25%), healthcare providers (18%), government entities such as State Medicaids (9%), medical claim clearinghouses (6%), and other healthcare industry organizations (17%).

[18] Ibid.

Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13563 also directs agencies not only to engage the public and provide an opportunity to comment on all regulations, but also calls for greater communication across all agencies to eliminate redundancy, inconsistency, and overlapping, as well as outlines processes for improving regulation and regulatory review.

A Regulatory Impact Analysis must be prepared for major rules with economically significant effects ($100 million in 1995 dollars or more in any 1-year). Because of the impact on the health care industry of the proposed adoption, implementation, and use of the HPID and the proposed delay in the compliance date for ICD–10, this rule has been designated an ''economically'' significant regulatory action, under section 3(f)(1) of Executive Order 12866 as it will have an impact of over $100 million on the economy in any 1 year.

The impacts of implementing HPID and delaying the compliance date for transition to ICD–10 are quite different, and, because of their respective impacts, both provisions of the proposed rule would be considered economically significant. Accordingly, we have prepared two independent RIAs: One analysis of the impact of the proposed adoption and use of the HPID and one for the proposed delay of compliance date for transition to the ICD–10. These RIAs, to the best of our ability, present the costs and benefits of this notice of proposed rulemaking, and this proposed rule has been reviewed by the Office of Management and Budget. The RIA on the proposed delay of ICD–10 follows the RIA on the proposed implementation and use of the HPID.

We anticipate that the adoption of the HPID and the OEID and the additional requirement for organization covered health care providers to require certain non-covered individuals who are prescribers to obtain and use an NPI would result in benefits that outweigh the costs to providers and health plans. We anticipate that the delay of ICD–10 will have costs to health plans and clearinghouses, though it will be beneficial to a group of providers.

In addition, under section 205 of the UMRA (2 U.S.C. 1535), having considered at least three alternatives for the HPID that are referenced in the section VI.D. of this proposed rule, HHS has concluded that the provisions in this rule are the most cost effective alternative for implementing HHS' statutory requirements concerning administrative simplification. We did not consider alternatives to the addition to the NPI requirements that is proposed in this rule, as the NPI is the standard identifier for health care providers under HIPAA and based on ongoing industry feedback, prescriber NPIs are not always available. Therefore, we believe a regulatory requirement closing the prescriber loophole in the NPI rule is necessary to ensure that the remaining prescribers without an NPI obtain one. We estimate that the proposed addition will have little financial impact on industry and is therefore cost effective in its own right.

Similarly, we have considered four alternatives for delaying ICD–10 compliance.

The Regulatory Flexibility Act (RFA), as amended, requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Small businesses are those with sizes below thresholds established by the Small Business Administration (SBA). Individuals and States are not included in the definition of a small entity.

For purposes of the RFA, most physician practices, hospitals and other health care providers are small entities, either by nonprofit status or by having revenues less than $10 million for physician practices and less than $34.5 million for hospitals in any 1 year. We have determined that the proposed adoption of the HPID in this proposed rule will have an impact on a substantial number of small entities and that an initial regulatory flexibility analysis, an analysis on the impact of this proposed rule on small entities, is required. The regulatory flexibility analysis on the impact of the proposed adoption of HPID will come after the RIA. However, the initial regulatory flexibility analysis for HPID concludes that, although a significant number of small entities may be affected by this proposed rule, the economic impact on small entities will not be significant.

We have also determined that the proposed delay of the compliance date for ICD–10 will have an impact on a substantial number of small entities and this regulatory flexibility analysis will follow the RIA for the proposed delay of ICD–10. The initial regulatory flexibility analysis for the proposed delay of ICD–10 concludes that small entities will be positively impacted economically by the proposed compliance date delay and that there will be no significant burden.

In addition, section 1102(b) of the Act requires a regulatory impact analysis for ''any rule or regulation proposed under title XVIII, title XIX, or part B of [the Act] that may have a significant impact on the operations of a substantial number of small rural hospitals.'' This proposed rule, however, is being proposed under title XI, part C, ''Administrative Simplification,'' of the Act, and, therefore, does not apply. As to the addition to the NPI requirements, the method for compliance by covered organization health care providers, including small rural hospitals, is discretionary, and could vary. It could take the form of a verbal directive to prescribers whom they employ or contract with, to revising hospital policies and procedures as part of routine updating, or some other option. We believe there will not be a significant impact to the operations of a substantial number of small rural hospitals. We seek industry feedback on this assumption.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1-year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This proposed rule contains mandates that would likely impose spending costs on State governments and the private sector, of more than $139 million. We will illustrate the costs of adoption of the HPID to the State governments, specifically the impact to State Medicaid programs, and to the private sector in our consideration of costs to health plans in the RIA. As to the addition to the NPI requirements, again, since the method for compliance by covered organization health care providers is discretionary and could vary, for example, from a verbal directive to prescribers whom they employ or contract with, to updating employment or contracting

agreements, we believe there is no mandate which imposes spending costs on State government or the private sector in any 1 year of $139 million or more.

We will illustrate the costs of the proposed delay of ICD–10 to State Medicaid programs and to the private sector in our consideration of costs to health plans in the RIA that addresses costs and benefits of the delay of compliance of ICD–10.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State laws, or otherwise has Federalism implications. The proposed adoption of the HPID in this proposed rule will not have a substantial direct effect on State or local governments, does not preempt States, or otherwise have Federalism implications. The proposed delay of compliance with ICD–10 in this proposed rule will not have a substantial direct effect on State or local governments, does not preempt States, or otherwise have Federalism implications.

C. HPID: Assumptions Regarding the Use of Transaction Standards

1. Current and Projected Use of Three Transactions

A major assumption in our impact analysis of the HPID is that the health care industry will experience increased use of three electronic health care standard transactions over the next 10 to 15 years. The three transactions are the eligibility for a health plan transaction, the health care claim status transaction, and the health care electronic funds transfer (EFT) and remittance advice transaction. The reason we chose these three transactions in particular is because we assume these three transactions will see the greatest increase in use from 2013 to 2023. We base the assumption that these three transactions will increase in use on the following three premises:

First, the number of total health care claims is expected to increase considerably in the United States. Claims are expected to increase due to an aging population that will require an increasing number of health care services. For instance, aging baby boomers will double Medicare's enrollment between 2011 and 2031.[19] Also, the Affordable Care Act is expected to increase the number of insured adults by 30 to 33 million from 2016 on.[20] Moreover, the average American has increased the number of visits to a physician's practice: According to data from HHS, ''From 1997 through 2007, the annual number of ambulatory care visits increased by 25 percent, driven both by the aging of the population, as older persons have higher visit rates than younger persons in general, and by an increase in utilization by older persons.'' [21] All these indicators point to a substantial increase in patients and patient visits to providers. The expected increase in patients and patient visits will drive providers to seek more automated processes in order to check patients' eligibility through the eligibility for a health plan transaction, check claim status with the health care claim status transaction, and receive payments and remittance advice through the health care EFT and remittance advice transaction.

Second, it is anticipated that the use of electronic business transactions and electronic transmissions in general is expected to become more widespread for U.S. businesses and society at large. For example, in 2007, the typical organization made 26 percent of its payments to other business (B2B) electronically; by 2010, that percentage rose to 43 percent.[22] Overall, the number of noncash payments among consumers and businesses alike increased about 4.5 percent per year from 2003 to 2009.[23]

Third, statutory and regulatory initiatives at the State and Federal level will drive or attract health care entities to increased usage of health care electronic transactions. On the Federal level, initiatives include the adoption and implementation of standards for health care EFT and the implementation of a unique health plan identifier as proposed by this rule. Likewise, the increase will be due to the adoption of operating rules for the eligibility for a health plan transaction and for the health care EFTs, and remittance advice transaction. The operating rules for the eligibility for a health plan transaction will go into effect in 2013 and the operating rules for the health care EFTs transaction, will take effect in 2014.

While our impact analysis is based on the expected increase in usage of three HIPAA transactions, other HIPAA transactions may increase in use as well. However, we have not attempted to draw conclusions about other HIPAA transactions because (1) there are no regulatory attempts to streamline other transactions in the near term (with, for example, the adoption of operating rules); and (2) we have less of an understanding of the impact that implementation of the HPID will have on covered transactions other than these three.

Table 5 lists our assumptions on the increased use of these three HIPAA transactions between 2013 and 2023. We have calculated the 2013 estimates—for example, our baseline—based on a number of sources and calculations:

- We estimated the number of eligibility requests (electronic and non-electronic) by taking 90 percent [24] of the total the projected number of claims.[25] The percentage estimate of electronic eligibility requests as a proportion of total eligibility requests in 2013 is derived from an analysis of a number of different industry studies on electronic data interchange (EDI) usage.[26]
- Similarly, we estimated the number of claim status requests by taking 0.14 percent of the total projected number of claims.[27] The percentage estimate of electronic claim status requests as a proportion of total claim status request in 2013 is derived from an analysis of a number of different industry studies on EDI usage.[28]

[19] ''The 2011 Medicare Trustees Report: The Baby Boomer Tsunami,'' presentation by the American Enterprise Institute for Public Policy Research, May 2011: *http://www.aei.org/event/100407*

[20] *http://www.whitehouse.gov/healthreform/relief-for-americans-and-businesses*

[21] S.M. Schappert and E.A. Rechsteiner, ''Ambulatory Medical Care Utilization Estimates for 2007,'' Vital and Health Statistics, Series 13, Number 169, 2011.

[22] ''2010 AFP Electronic Payments: Report of Survey Results,'' November 2010, Association for Financial Professionals, underwritten by J.P. Morgan.

[23] ''The 2010 Federal Reserve Payments Study; Noncash Payment Trends in the United States 2006–2009,'' sponsored by the Federal Reserve System, April 5, 2011.

[24] The Oregon Survey found that, for every claim, .9 requests for eligibility were conducted. ''Oregon Provider and Payer Survey,'' 2010 (*http://www.oregon.gov/OHPPR/HEALTHREFORM/AdminSimplification/Docs/FinalReport_AdminSimp_6.3.10.pdf*).

[25] An average of high and low projected estimates of claims from Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards; Proposed Rule *http://edocket.access.gpo.gov/2008/pdf/E8–19296.pdf.*

[26] ''Oregon Provider and Payer Survey,'' 2010 ''Overhauling the US Healthcare Payment System,'' conducted by McKinsey & Company, published in *The McKinsey Quarterly,* June 2007. (*http://www.mckinseyquarterly.com/Overhauling_the_US_health_care_payment_system_2012).*

The National Progress Report on Healthcare Efficiency, 2010, Produced by the U.S. Healthcare Efficiency Index.

[27] The Oregon Survey found that, for every claim, .14 were followed up by a claim status request. ''Oregon Provider and Payer Survey,'' 2010.

[28] ''Oregon Provider and Payer Survey,'' 2010 ''Overhauling the US Healthcare Payment System,''

Continued

• For remittance advice, we started with the projection for national health expenditures [29] and used Medicare data to arrive at the average dollar amount of a single payment.[30] Using that calculation, we were able to estimate the projected number of health care claim payments for 2013 considering the ratio of remittance advice per payment according to Medicare data.[31] The percentage estimate of electronic remittance advice as a proportion of total remittance advice was calculated using a weighted average of Medicare data (electronic remittance advice as a percentage of total remittance advice), VHA data,[32] and industry studies.[33]

We have projected the percentage use of EDI out to 2023 using a number of calculations:

• In the Eligibility and Claim Status Operating Rules IFC published in the July 8, 2011 **Federal Register** (76 FR 40458), we projected that electronic eligibility requests will increase by 15 percent year over year from 2013 through 2017 and by 8 percent year over year from 2018 through 2022 due to a number of factors. See the Eligibility and Claim Status Operating Rules IFC (76 FR 40481) for the assumptions behind that projection. Note that, despite the 15 percent increase, the number of claims (patient visits) will increase substantially over that same period, so the percentage of electronic eligibility requests as a proportion of all eligibility requests will increase at a much slower rate.

• In the Eligibility and Claim Status Operating Rules IFC, we projected that electronic claim status inquiries will increase by 20 percent year over year from 2013 through 2017 and by 10 percent year over year from 2018 through 2022 due to a number of factors. See the Eligibility and Claim Status Operating Rules IFC (76 FR 40481) for the assumptions behind that projection. Again, despite the year over year increases, the number of claims (patient visits) will increase substantially over that same period, so the percentage of electronic claim status requests as a proportion of all claim status requests will increase at a much slower rate.

• We have noted previously the reasons why we predict that electronic transactions, overall, will increase, including a substantial increase in the number of claims, more widespread use of electronic transactions by U.S. businesses and society at large, and State and Federal mandates requiring or promoting electronic transactions of health information. Due to these reasons, we estimate 20 percent increase of electronic remittance advice transactions year over year from 2013 through 2018, and a 12 percent increase year over year from 2019 through 2023. Again, despite the year over year increases, the number of total remittance advice transactions will increase substantially over that same period, so the percentage of electronic remittance advice as a proportion of all remittance advice will increase at a much slower rate.

We believe these estimates to be conservative: The increase in patients and patient visits in the next decade alone may drive a greater number of health care entities to adopt EDI. However, we recognize the uncertainties inherent in this projection, and we are specifically soliciting comments on these assumptions.

TABLE 5—PREDICTED PERCENTAGE IN EDI USAGE

Year	Eligibility for a health plan transaction: percentage of electronic transactions as a proportion of total eligibility inquiries and responses	Health care claim status transaction: percentage of electronic transactions as a proportion of total claim status transactions	Health care payment and remittance advice (electronic remittance advice) transaction: percentage of electronic transactions as a proportion of total remittance advice transactions (does not include percentage of electronic payments)
2013	14	12	26
2023	25	26	70

2. Projected Increased Use of Three Transactions Attributable to Implementation of HPID

When attempting to quantify anticipated savings, we recognize that some of increased use of three HIPAA transactions from 2013 to 2023 will be attributable to the implementation of administrative simplification initiatives, including the adoption of the EFT standard, operating rules for four transactions, and Version 5010 of the HIPAA transactions as implemented by the Modifications final rule. Therefore, we attribute some of the savings that are derived from an increased use in these transactions to these other initiatives.

For purposes of this impact analysis, we will assume a percentage of the increase in use of electronic transactions by health care providers and health plans as attributable to implementation of an HPID in order to illustrate that the HPID is foundational for overall administrative simplification (Table 6).

Our basic argument is echoed in the Transactions and Code Sets proposed rule, NPI proposed rule, and the Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards proposed rule (73 FR 49742), published in the **Federal Register** on August 22, 2008, (hereinafter referred to as the Modifications proposed rule): Administrative simplification initiatives drive covered entities to increase their usage of electronic transactions, and electronic transactions have substantial cost savings over manual transactions. The implementation of administrative simplification initiatives mandated by the Affordable Care Act is expected to streamline HIPAA electronic

conducted by McKinsey & Company, published in *The McKinsey Quarterly,* June 2007. (*http://www.mckinseyquarterly.com/Overhauling_the_US_health_care_payment_system_2012*).

[29] National Health Expenditure Projections 2009–2019 (CMS), *http://www.cms.gov/NationalHealthExpendData/25_NHE_Fact_Sheet.asp*).

[30] CMS Electronic Data Interchange (EDI) Performance Statistics (*http://www.cms.gov/EDIPerformanceStatistics/*) and CMS CROWD data.

[31] There are 6 percent more remittance advice sent than payments (some remittance advice adjusts to no payment). CMS Electronic Data Interchange (EDI) Performance Statistics (*http://www.cms.gov/EDIPerformanceStatistics/*) and CMS CROWD data.

[32] Financial Management Service, U.S. Department of Treasury, Payment Volume Charts Treasury-Disbursed Agencies (*www.fms.treas.gov/eft/reports.html*).

''Comments from VHA Health Care as Health Care Provider,'' testimony by Barbara Mayerick for NCVHS December 3, 2010 hearing.

''FY10 Geographic Distribution of VA Expenditures (GDX),'' Veterans Health Administration Chief Business Office.

[33] The National Progress Report on Healthcare Efficiency, 2010, Produced by the U.S. Healthcare Efficiency Index.

transactions, make them more consistent, and decrease the dependence on manual intervention in the transmission of health care and payment information. This, in turn, will drive more health care providers and health plans to utilize electronic transactions in their operations.

The anticipated cost savings of all administrative simplification regulations and initiatives, therefore, can be divided into two categories: Materials and time. First, the material cost savings that results from each transaction that moves from a non-electronic, manual transmission of information to an electronic transaction. These cost savings result from covered entities using less paper, postage, and equipment which are required for paper-based transactions. Second, the use of electronic transactions to conduct billing and insurance related tasks takes considerable less time than when the same transactions are done through phone, email or postal mail, or manually. Therefore, each move from non-electronic transaction to an electronic transaction results in staff-time savings and cost reductions.

The estimated cost and benefits of implementation and use of HPID need to be understood in the context of the HPID being foundational to other administrative simplification initiatives, both those initiated by industry and those regulated by State or Federal governments. If other initiatives do not follow, then the HPID will likely have little substantive impact. The ranges given of possible cost and benefit impacts are reflective of the uncertainty inherent in multifactorial environments such as the health care industry.

To illustrate the foundational aspects of the HPID, we estimated a range of overall increase of 1 to 2 percent per year, starting in 2015, in the use of both the eligibility for a health plan transaction and the claim status transaction ''attributable'' to implementation of the HPID over the next decade. In addition, we estimate a 1 to 3 percent increase in the use of electronic health care payment and remittance advice transaction attributable to implementation of the HPID because the routing of that transaction is especially important for the payment process. Given the overall increase in both EDI and health care transactions in general expected over the next decade, this annual increase attributable to HPID accounts for a small percentage of electronic transactions as a proportion of total transactions over those 10 years. For example, after an annual increase in remittance advice due to implementation of the HPID of 1 to 3 percent from 2013 through 2023, ultimately, only 1 to 2 percent of all electronic remittance advice transactions from 2013 through 2023 will be attributable to implementation of the HPID. We welcome comments about this approach from industry and other stakeholders.

TABLE 6—PREDICTED PERCENTAGE OF EDI USAGE FROM 2013 TO 2023 ATTRIBUTABLE TO IMPLEMENTATION OF HPID

Year	Eligibility for a health plan transaction: percentage of electronic transactions attributable to implementation of HPID as a proportion of eligibility inquiries and responses	Health care claim status transaction: percentage of electronic transactions attributable to implementation of HPID/OEID as a proportion of total claim status transactions	Health care payment and remittance advice (electronic remittance advice) transaction: percentage of electronic transactions attributable to implementation of HPID as a proportion of total remittance advice transactions (does not include percentage of health care claim payments EFT)
2023	1% to 2%	1% to 2%	1% to 2%

D. Alternatives Considered Regarding the HPID and NPI

In deciding to adopt the HPID as the format for the national unique health plan identifier, we considered a number of alternatives, on which we solicit public and stakeholder comments. As noted, we did not consider alternatives to the addition to the NPI requirements.

For the most part, the HPID alternatives were not chosen because they were inconsistent with the testimony given at the July 2010 NCVHS hearing on HPID and because they were not included in NCHVS' recommendations. As noted previously, section 1172(f) of the Act provides that ''the Secretary shall rely on the recommendations of the National Committee on Vital and Health Statistics established under section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)). * * *'' Section 1104(c) (1) of the Affordable Care Act directs the Secretary to promulgate a final rule to establish a unique health plan identifier ''based on input of the National Committee on Vital and Health Statistics.'' The NCVHS recommendations recommended what it thought was the most cost effective and efficient approach to standardizing the HPID, and, consequently, the Secretary has relied heavily on its recommendations for these proposals.

1. The NAIC Company Code

The NAIC Company Code is a 5-digit alphanumeric identifier that resides in a proprietary database maintained by the NAIC. The company code is assigned to insurers, including managed care organizations, to identify insurance companies on financial reports filed with the States. We decided against using the NAIC company code because it has embedded intelligence, multiple company codes have been assigned to the same insurer for the same line of business, and fewer than half of the entities with NAIC company codes are entities listed in the statute as health plans. In addition, a 5-digit number would only allow 100,000 entities to be enumerated. We also considered the NAIC Company Code to be a comparably expensive alternative.

2. The Federal Tax Identification Number

The EIN, also referred to as a Federal Tax Identification Number, was designed and is used to identify business entities for tax purposes. While the EIN is an appropriate and cost-effective standard for the unique employer identifier, we do not believe it would be appropriate for the standard for the unique health plan identifier for the following reasons. Using the EIN to identify employers and health plans under HIPAA could cause confusion among users of the numbers. Also, the current EIN scheme does not cover all health plans, for instance, an employer group health plan would not have its own EIN, so the EIN would need to be expanded to accommodate all health plans.

3. IRS Identifier

We also considered the IRS and DOL Identifier. An Employee Benefit Plan subject to ERISA may be required to file

an Annual Report/Report of Employee Benefit Program Plan (Form 5500 Series Reports). This includes Pension Benefit Plans, and Direct Filing Entities. The IRS and DOL have combined their filing requirements on Form 5500 Series Report to minimize the efforts of plan administrators and employers. The Form 5500 Series Reports are used by both the IRS and the DOL for audit purposes to ensure that the employee benefit plans are operated and managed in accordance with certain prescribed standards and to protect the rights and benefits of participants. These benefit plans use their 9-digit EIN with a 3-digit suffix that is assigned according to the type of plan they offer. The IRS provides very specific guidelines on the selection of the 3-digit suffix. The 3-digit suffix has required guidelines that would be too specific for the purposes of the HPID. In addition, this format would not be capable of incorporating a check digit without modification. Therefore, we did not consider the IRS identifier as a viable alternative for identifying health plans in a manner consistent with our statutory mandates and our program objectives.

E. Impacted Entities—HPID and NPI

All HIPAA covered entities may be affected by the standard proposed in this proposed rule although, as we estimate, only a segment of covered entities will have substantive cost or benefits associated with the adoption of the HPID. HIPAA covered entities include all health plans, health care clearinghouses, and health care providers that transmit health information in electronic form in connection with a transaction for which the Secretary has adopted a standard.

Table 7 outlines the number of entities that may be affected by the HPID and OEID, along with the sources of those data.

TABLE 7—TYPES AND NUMBERS OF AFFECTED ENTITIES

Type	Number	Source
Health Care Providers—Offices of Physicians (includes offices of mental health specialists and substance use treatment practitioners).	234,222	Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards; Proposed Rule *http://edocket.access.gpo.gov/2008/pdf/E8-19296.pdf* (based on AMA statistics).
Health Care Providers—Hospitals	5,764	Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards; Proposed Rule *http://edocket.access.gpo.gov/2008/pdf/E8-19296.pdf*.
Health Care Providers—Nursing and residential Care Facilities not associated with a hospital.	66,464	2007 Economic Census Data—Health Care and Social Assistance (sector 62) using the number of establishments. ~NAICS code 623: Nursing Homes & Residential Care Facilities n = 76,395 × 87 percent (percent of nursing and residential care facilities not associated with a hospital) = 66,464.
Other Health Care Providers—Offices of dentists, chiropractors, optometrists, mental health practitioners, substance use treatment practitioners, speech and physical therapists, podiatrists, outpatient care centers, medical and diagnostic laboratories, home health care services, and other ambulatory health care services, resale of health care and social assistance merchandise (durable medical equipment).	384,192	2007 Economic Census Data—Health Care and Social Assistance (sector 62) using the number of establishments: ~NAICS code 621: All ambulatory health care services (excluding offices of physicians) = 313,339 (547,561 total − 234,222 offices of physicians). ~NAICS code 62-39600 (product code): Durable medical equipment = 70,853.
Health Plans—Commercial: Impacted commercial health plans considered in this RIA are health insurance issuers; that is, insurance companies, services, or organizations, including HMOs, that are required to be licensed to engage in the business of insurance in a State.	1,827	This number represents the most recent number as referenced in ''Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment,'' Proposed Rule, 2011 **Federal Register** (76 FR 41930), July 15, 2011,'' from *http://federalregister.gov/a/2011-17609.*
Health Plans—Government	60	Represents the 56 State Medicaid programs, Medicare, the Veteran's Administration (VHA), and Indian Health Service (IHS), TRICARE.
Health Plans—All	1,887	Insurance issuers (n = 1,827) + Medicaid agencies + Medicare, VHA, TRICARE, and IHS (n = 60) = 1,887 total health plans.
Third Party Administrators	750	Summary of Benefits and Coverage and the Uniform Glossary; Notice of Proposed Rulemaking *http://www.gpo.gov/fdsys/pkg/FR-2011-08-22/pdf/2011-21193.pdf.*
Transaction Vendors and Clearinghouses	162	Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards; Proposed Rule *http://edocket.access.gpo.gov/2008/pdf/E8-19296.pdf,* based on a study by Gartner.

F. Scope and Methodology of the Impact Analysis for the HPID and NPI

This impact analysis estimates the costs and benefits that will be realized through the implementation and use of the HPID. We do not analyze the costs and benefits of the addition to the NPI requirements, apart from the costs associated with applying for an NPI that are already addressed in section V.B. of this proposed rule concerning the collection of information requirements. Aside from the time necessary to apply, we do not anticipate any financial impact as a result of the addition to the NPI requirements. We ask for comments on this approach.

In this RIA, we do not analyze the impact of implementation and use of the OEID. The OEID, as proposed herein, would be a data element that could be voluntarily used by entities other than health plans. These other entities may include, for example, health care clearinghouses, transaction vendors, and third party administrators that provide administration or management for self-insured health plans. The range of total entities that may apply for and use an OEID is zero to approximately 900 entities (750 Third party administrators + 169 transaction

vendors). Therefore, using the methodology we use in this RIA, the cost for implementation of the OEID for other entities ranges from no cost to approximately $500 million, depending on choices made by those entities. Because of the uncertainty inherent in this range of cost, based on the number of entities that may apply for the OEID we will not attempt to quantify the impact of applying for or using an OEID beyond this limited analysis. Nor will we include this range of costs in our summary of this RIA. However, we can assume that implementing and using OEID would be accompanied by a proportional range of costs and benefits akin to the cost and benefits estimated for health plans in this RIA. We welcome comments on the number and kind of entities that may apply for and use an OEID. We estimate the cost of the Enumeration System to be $1.5 million. The Federal Government will bear the costs associated with the Enumeration System that will enumerate health plans and other entities and maintain their information. These include the costs of enumerating health plans and other entities, the cost of maintaining health plan and other entity information in the Enumeration System, and the costs of disseminating HPID and OEID data to the health care industry and others, as appropriate. HHS will develop the Enumeration System, and conduct the updating and data dissemination activities. We will apply this cost to our summary of costs and the accounting statement, but will not provide any further analysis of this cost within the narrative of the RIA.

The costs to health plans of applying for an HPID and updating and maintaining the information in the Enumeration System are detailed in section III of this proposed rule. We will reflect these costs in the summary of the costs to health plans in this RIA.

While we assume that adoption of the health plan identifier standards will affect a broad range of health care providers, as illustrated in Table 7, we will only be examining the costs and benefits of implementation and use of the HPID on two types of health care providers: Hospitals and physician practices. We will not analyze the impact to nursing and residential care facilities, dentists, or suppliers of durable medical equipment.

There are two reasons for narrowing the scope of this analysis to only two categories of health care providers: we have very little data on the usage of EDI among dentists, suppliers of durable medical equipment, nursing homes, and residential care facilities. The lack of data for these types of health care providers has been noted in other studies on administrative simplification.[34] We assume that the greatest benefits will be gained by hospitals and physician practices as they conduct the majority of standard transactions. We welcome comment from industry and the public as to our assumptions.

We have not included an analysis of the impact on pharmacies because the HPID will not be used extensively in electronic transactions by the pharmacy industry. This industry will instead be using the BIN/IIN and PCN as described previously in this proposed rule. Therefore, we assume no impact on pharmacies.

With respect to health care providers, only health care providers that transmit health information in electronic form in connection with a transaction for which the Secretary has adopted a HIPAA transaction standard are considered covered entities.

We assume that the HPID may be used to identify health plans in non-electronic transactions as well, but, as this standard is only required for use in HIPAA standard transactions, we have not tried to measure the impact on non-electronic transactions. The costs and benefits included in this analysis do not include infrastructure or software costs for health care providers who are equipping their practices for the transmittal of electronic transactions for the first time. The costs in this impact analysis include only those that are necessary to implement the standard for the national unique health plan identifier.

We include health care clearinghouses and transaction vendors as affected entities in Table 7. Transaction vendors are entities that process claims or payments for other entities, which may include health plans. Transaction vendors may not meet the HIPAA definition of health care clearinghouse, but as used in this context, health care clearinghouses would constitute a subset of transaction vendors. Payment vendors would be a type of transaction vendor—a transaction vendor that ''associates'' or ''reassociates'' health care claim payments with the payments' remittance advice for either a health plan or provider. For our purposes here, transaction vendors do not include developers or retailers of computer software, or entities that are involved in installing, programming or maintaining computer software. Health care clearinghouses and transaction vendors may be impacted because their systems would have to accommodate the adoption of the new standards such as the HPID to identify health plans in standard transactions. However, we did not calculate costs and benefits to health care clearinghouses and transaction vendors in this cost analysis because we assume that any associated costs and benefits will be passed on to the health plans or providers, and will be included in the costs and benefits we apply to health plans or providers.

We use the total number of health insurance issuers as the number of commercial health plans that will be affected by this proposed rule, and will use this number in our impact analysis. A health insurance issuer is an insurance company, insurance service, or insurance organization, including an HMO, that is required to be licensed to engage in the business of insurance in a State, and that is subject to State law that regulates insurance. Although this number is specific to the individual and small group markets, we assume that many health insurance issuers in the large group market are included in this number because they are likely to market to individuals and small groups as well. While the category or ''health insurance issuers'' represents a larger number of health plans than those included in the NAICs codes for ''Direct Health and Medical Insurance Carriers'' (897 firms), we believe the category of health insurance issuers is a more accurate representation of companies conducting HIPAA transactions. Companies that provide Medicaid managed care plans are included in the category of commercial health plans.

Although self-insured group health plans meet the HIPAA definition of ''health plan,'' we did not include them in this impact analysis. While self-insured group health plans will be required to obtain the HPID, we assume that, with a few exceptions, such plans do not send or receive HIPAA electronic transactions because most are not involved in the day-to-day activities of a health plan and outsource those services to third party administrators or transaction vendors. Because they do not meet the definition of ''health plans,'' TPAs and transactions vendors are not required to obtain or use an HPID, though they may elect to obtain and use an OEID. The costs and benefits associated with the HPID are applicable only to entities that are directly involved in sending or receiving

[34] ''Excess Billing and Insurance-Related Administrative Costs,'' by James Kahn, in *The Healthcare Imperative; Lowering Costs and Improving Outcomes: Workshop Series Summary,* edited by Pierre L. Yong, Robert S. Saunders, and Leigh Anne Olsen, Institute of Medicine of the National Academies, the National Academies Press, Washington, DC: 2010.

standard transactions, though we recognize that some of the cost and benefits will trickle down to employers and their employees.

We have no data concerning how many health plans are actually identified in standard transactions, as opposed to ''other entities'' that are identified in their stead. Therefore, we have no assurance of how many health plans may be affected by this proposed rule. We base our cost estimates on the highest number of entities that would likely be affected. The number of health plans is used as a factor in our calculation of costs, but not in our calculation for savings. We are therefore taking a conservative approach to the costs to health plans which we believe is warranted given the uncertainties in our estimates. We solicit industry and stakeholder comments on our assumptions.

G. Costs Associated with HPID and NPI

Due to a lack of baseline data, we use the cost estimate calculations provided in the impact analysis for the Modifications proposed rule and the clarifications of that impact analysis contained in the Modifications final rule.

We chose the costs in the Modifications proposed and final rules as our baseline for costs for a number of reasons:

- The cost categories in the Modifications rules are similar to the cost categories anticipated by implementation of the HPID: one-time or short-term costs such as software conversion, and cost of automation, training, implementation, and implementation guides.
- There are no analogous national standard identifiers from which to derive costs and benefits.

In our discussion of the HPID, we considered the NPI as a potential analogous identifier; however, the cost/benefit analysis for the NPI, included in the ''National Standard Health Care Provider Identifier,'' proposed rule,'' published in the May 7, 1998 **Federal Register** (63 FR 25320) does not analyze the cost/benefits of implementation of the NPI itself. Instead, the analysis reiterates the cost/benefits of the Transactions and Code Sets final rule (65 FR 50312). The Transactions and Code Sets final rule analyzes the costs/benefits of sending and receiving all HIPAA transactions. The Modifications final rule is another reiteration of the original cost/benefit analysis of the Transactions and Code Sets final rule, but the data has been adjusted to 2009, and so we will use it because it is more recent but adjust the costs to 2012 dollars. In the impact analysis for the Modifications final rule, the estimated costs to implement the update to the standards were 25 percent less (minimum) to 50 percent (maximum) of the costs estimated in the Transactions and Code Sets final rule.

To determine the anticipated costs for health care providers and health plans, we used 25 percent of the cost estimates for the Modifications final rule. We used this percentage because we determined that implementation of HPID will not be as significant as the impact of Version 5010 adopted in the Modifications final rule for the following reasons: First, the implementation of the Modifications final rule is much broader and more complex than the implementation of a unique health plan identifier. The Modifications rule broadly amends or alters every HIPAA transaction standard. This rule proposes a standard that will need to be included in every HIPAA transaction; however, it is only one data field, compared to a multitude of data fields that were affected by the adoption of the transaction standards outlined in the Modifications final rule.

Second, we believe covered entities are more prepared for the implementation of the HPID than they may have been for the Modifications final rule. Because the standards for transactions and codes sets, security and privacy, employer identifier, and health care provider identifier have already been adopted, we assume that covered entities have already made significant system investments. In addition, a data field already exists for the health plan identifier in the HIPAA standard transactions.

To support our estimate that the HPID will cost 25 percent of the costs of the Modifications final rule, we make a number of assumptions. We assume many of the implementation costs covered entities will experience will be short term or one-time costs for system implementation and transition costs. System implementation costs include software and software development, testing, training, and other conversion costs. Conversion will require training for staff and will require changes to documentation, procedures, records, and software. Some covered health care entities may choose to use the services of software system vendors, billing companies, transaction vendors, and/or health care clearinghouses to facilitate the transition to the HPID.

''Transition'' costs, which we assume will occur in the second and third years of implementation, are defined as the post-implementation costs for monitoring, maintaining, and adjusting the upgraded systems and related processes with trading partners until all parties reach a ''steady state'' with regard to utilizing the HPID. While there will be initial costs to implement the HPID, we believe a standard HPID will simplify standard transactions and improve their efficiency and effectiveness. In addition, the lack of embedded intelligence within the HPID will result in lower implementation and maintenance costs for covered entities.

1. Costs of HPID to Health Plans

Health plans will bear most of the cost of implementing the HPID. We estimate the cost to health plans to implement and use an HPID will be 25 percent of the costs that the impact analysis in the Modifications final rule calculated in order for industry to implement Version 5010 of the standard transactions. As noted previously, implementation of the HPID will be analogous to—yet significantly less than—implementation of Version 5010 because the same systems will be affected, and, in both cases, there are both implementation and transition costs. Beyond these general similarities, we assume that implementation of HPID will be much less expensive for the reasons stated previously.

The estimate that HPID implementation and transition will be 25 percent of the cost of Version 5010 is a conservative estimate, we believe, and it is probable that the costs will be much less. However, by estimating HPID implementation at 25 percent of the cost of Version 5010, we are able to reflect the uncertainty in our calculations because our calculations maintain the range of minimum and maximum costs from the Modifications final rule.

In addition, the cost estimates from the Modifications final rule have been adjusted down because we estimate there will be fewer health plans impacted by this rule than are impacted by the Modifications final rule. For costs associated with applying for and obtaining an HPID, see section V.A. of this proposed rule. We welcome comments and data from the industry and other stakeholders on this assumption.

To comply with this proposed rule, a health plan that is not a small health plan must start using the HPID in the standard transactions on or after October 1, 2014 (small health plans must start using the HPID in the standard transactions on or after October 1, 2015). As we note in the RFA, section V.J.1.d of this proposed rule, there are, perhaps, 100 health plans that can be defined as small health plans. While we expect these

costs will accrue between the time the final rule is published and the date the HPID is fully implemented, for purposes of simplification we have placed all system implementation costs—including those for small health plans—in 2014. Transition costs will occur in 2015 and 2016.

TABLE 8— HPID COST FOR COMMERCIAL AND GOVERNMENT HEALTH PLANS*

	Cost category	Minimum cost estimate per modifications rule (in millions)	Maximum cost estimate per modifications rule (in millions)	Applied percentage	Minimum estimated cost of implementing HPID (in millions)	Maximum estimated cost of implementing HPID (in millions)
Commercial Health Plans **	System Implementation	$1935.0	$3870.5	25	$483.76	$967.63
	Transition (Year 2 and 3)	341.5	683.0	25	85.37	170.76
Government Health Plans (Medicare, Medicaid, VHS, TRICARE, IHS).	System Implementation	281.0	537.8	25	70.25	134.45
	Transition (Year 2 and 3)	49.6	94.9	25	12.40	23.73
All Health Plans	Enrollment and Updates***				0.18	0.18
	System Implementation				554.19	1102.26
	Transition (Year 2 and 3)				97.77	194.48
	Total				651.95	1296.74

* Based on 2012 dollars.
** Minimum and maximum cost estimates per Modifications Rule for commercial health plans is adjusted to account for a lesser number of health plans considered than is estimated in the Modifications Rule.
*** See section V.A of this proposed rule; Collection of Information Requirements, for calculations on enrollment to HPID enumeration system.

2. Costs of HPID for Physician Practices and Hospitals

Covered physician practices and hospitals will be required to use the HPID in standard transactions. Health care providers that do not conduct covered transactions (for example, by submitting a paper claim that the health plan subsequently transmits electronically to a secondary payer) could also use the HPID, but would not be required to do so. Implementation costs for covered physician practices and hospitals depend on whether they generate claims directly or use a health care clearinghouse or transaction vendor.

If covered physician practices and hospitals submit claims directly, they would incur implementation costs in converting their systems to accommodate the HPID. Some covered health care providers may choose to use the services of software system vendors, billing companies, transaction vendors, and/or health care clearinghouses to facilitate the transition to the HPID. These health care providers would incur costs in the form of potential fee increases from billing agents or health care clearinghouses. For example, if a health care provider pays a fee to a billing agent or health care clearinghouse to process its health care transactions, the billing agent or health care clearinghouse might increase the cost to perform this service for the health care provider.

Table 9 illustrates the costs to covered hospitals and physician practices. Again, the costs are 25 percent of the costs estimated in the Modifications proposed and final rules. We invite comments on our assumptions and method for estimating the implementation costs.

TABLE 9—HPID COSTS TO COVERED HOSPITALS AND PHYSICIAN PRACTICES *

I	II	III	IV	V	VI	VII
	Cost category	Minimum cost estimate per modifications rule (in millions)	Maximum cost estimate per modifications rule (in millions)	Applied percentage	Minimum estimated cost of implementing HPID (in millions)	Maximum estimated cost of implementing HPID (in millions)
Hospitals	System Implementation	1042.5	$2085.9	25%	$260.63	$521.48
	Transition (Year 2 and 3)	184.0	368.1	25%	45.99	92.03
Physician Practices	System Implementation	486.8	973.6	25%	121.70	243.40
	Transition (Year 2 and 3)	85.9	171.8	25%	21.48	42.95
All Providers (Total)	System Implementation	1529.3	3059.5	25%	382.33	764.88
	Transition (Year 2 and 3)	269.9	539.9	25%	67.47	134.98
	Total				449.80	899.86

* Based on 2012 dollars.

H. Savings Associated With HPID and NPI

1. Savings to Health Plans

We have identified two areas in which health plans will experience savings due to the adoption of HPID: A reduction in the number of pended claims and an increased use of electronic health care transactions.

2. Pended Claims

Pended claims are claims that necessitate a manual review by the health plan. Pended claims are more expensive than ''clean'' claims, which do not require a manual review or

additional information in order to be processed. We are projecting a 5 to 10 percent annual reduction of pended claims as attributable to implementation of the HPID. We have calculated the savings that would come from this estimated projection from: data about claims receipts from the trade association America's Health Insurance Plans (AHIP),[35] information about eligibility transactions from the Oregon Provider and Payer Survey,[36] and data from the Modifications proposed and final rules.

One of the main goals of the use of the HPID is to have a consistent identifier for each health plan for use in standard transactions. This lack of a single identifier has resulted in the need for manual intervention to resolve eligibility questions and billing and payment issues when there are inconsistent approaches for identifying health plans. Covered health care providers would no longer have to keep track of and use multiple identifiers for a single health plan. After the initial outlay for changes to their systems, health care providers would be able to consistently identify the health plan to which they must submit claims.

According to AHIP, 14 percent of all claims were pended by health plans.[37] Assuming 6 billion claims will be submitted in 2014, as is projected in the Modifications proposed rule, this calculates to about 850 million pended claims (Table 10, Column 2).

We will assume that pended claims will decrease by a minimum of 5 percent to a maximum of 10 percent annually attributable to use of the HPID (Table 10, Columns 4 and 6). This estimate is based on an AHIP survey entitled, ''An Updated Survey of Health Care Claim Receipt and Processing Times.'' The survey concluded that 35 percent of all claims are pended because they are duplicate claims (or assumed to be duplicate claims), 12 percent are pended because of the lack of necessary information, 5 percent because of coordination of benefits (COB), and 1percent because of invalid codes.[38] The HPID may help alleviate these particular pended claims issues by enabling the automation of the COB process[39] and providing for more accurate routing of claims to the correct payer. This conclusion presumes that providing an HPID will lead to a measurable reduction of duplicate claims and/or claims pended because of a lack of necessary information. There is a large measure of uncertainty in this assumption and, as noted, the HPID would be foundational for subsequent activities such as the automation of the COB process. By itself, though, the HPID does not automate any processes. To reflect the uncertainty, we apply a range of percentages to the assumption.

According to AHIP, it costs a health plan $0.85 to reply electronically to a ''clean'' claim submission and $2.05 to reply to claims that ''necessitate manual or other review cost.'' Therefore, a health plan could save $1.20 per claim by automating a claim otherwise needing manual review (Table 10, Column 3). In order to calculate the savings from a 5 to 10 percent decrease in pended claims due to implementation of the HPID, we multiply the projected number of pended claims (Table 10, Column 2) times 5 percent for the low estimate and 10 percent for the high estimate. We then multiplied the high and low range of numbers of pended claims that will be avoided due to use of HPID times the $1.20 per claim that can be saved.

In considering how to project this cost avoidance, we decided that the 5 to 10 percent savings should continue each year over the 10 years following implementation of the standard, resulting in a savings of approximately $700 million to $1.4 billion. As stated previously, we consider the HPID standards in this notice of proposed rulemaking to be foundational standards that will be built upon by future operating rules and regulations over the next decade.

We welcome input and data from industry and other stakeholders with regard to these assumptions.

TABLE 10—ANNUAL SAVINGS TO HEALTH PLANS DUE TO DECREASE IN PENDED CLAIMS

(In millions) *

Year	Number of pended claims annually (in millions) **	Cost to review a pended claim ***	LOW number of pended claims (5%) that will be avoided attributable to HPID (in millions)	LOW total annual savings through reduction in pended claims (in millions)	HIGH number of pended claims (10%) that will be avoided attributable to HPID (in millions)	HIGH total annual savings through reduction in pended claims (in millions)
(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)
2014	848.4	$1.35	.0	.0	0	.00
2015	882.0	1.35	44.1	$59.5	88.2	$119.1
2016	917.0	1.35	45.9	61.9	91.7	123.8
2017	952.0	1.35	47.6	64.3	95.2	128.5
2018	994.0	1.35	49.7	67.1	99.4	134.2
2019	1036.0	1.35	51.8	69.9	103.6	139.9
2020	1077.4	1.35	53.9	72.7	107.7	145.5
2021	1120.5	1.35	56.0	75.6	112.1	151.3
2022	1165.4	1.35	58.3	78.7	116.5	157.3
2023	1212.0	1.35	60.6	81.8	121.2	163.6
2024	1260.5	1.35	63.0	85.1	126.0	170.2

[35] ''An Updated Survey of Health Care Claims Receipt and Processing Times, May 2006,'' America's Health Insurance Plans (AHIP) Center for Policy and Research.

[36] A comprehensive survey of 55 percent of Oregon's hospitals and 225 of the State's ambulatory clinics. *http://www.oregon.gov/OHPPR/HEALTHREFORM/AdminSimplification/Docs/FinalReport_AdminSimp_6.3.10.pdf.*

[37] AHIP, 2006.

[38] ''An Updated Survey of Health Care Claims Receipt and Processing Times, May 2006,'' America's Health Insurance Plans (AHIP) Center for Policy and Research.

[39] ''National Health Plan Identifier White Paper,'' prepared by the American Medical Association (AMA) Practice Management Center (PMC), September 22, 2009.

TABLE 10—ANNUAL SAVINGS TO HEALTH PLANS DUE TO DECREASE IN PENDED CLAIMS—Continued

(In millions) *

Year	Number of pended claims annually (in millions) **	Cost to review a pended claim ***	LOW number of pended claims (5%) that will be avoided attributable to HPID (in millions)	LOW total annual savings through reduction in pended claims (in millions)	HIGH number of pended claims (10%) that will be avoided attributable to HPID (in millions)	HIGH total annual savings through reduction in pended claims (in millions)
(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)
Total	.....	.....	.....	716.6	.....	1433.3

* Based on 2012 dollars.
** Based on 14% of total number of annual claims as projected in Modifications proposed rule.
*** AHIP, 2006, adjusted to 2012 dollars.

3. Increase in Electronic Transmittal of Three Standard Transactions

The implementation of all administrative simplification initiatives mandated by the Affordable Care Act are expected to streamline HIPAA electronic transactions, make them more consistent, and decrease the dependence on manual intervention in the transmission of health care and payment information. This, in turn, will drive more health care providers and health plans to utilize electronic transactions in their operations. Each transaction that moves from a non-electronic, manual transmission of information to an electronic transaction, brings with it material and time cost savings by virtue of reducing or eliminating the paper, postage, and equipment and additional staff time required to conduct paper-based transactions.

Table 11 lists our estimates of the savings for health plans when they move from a non-electronic transaction to an electronic transaction on a per transaction basis. For a more detailed description of how we arrived at the savings associated with the eligibility for a health plan transaction and the health care claim status transactions, see the RIA in the ''Administrative Simplification: Adoption of Operating Rules for Eligibility for a Health Plan and Health Care Claim Status Transactions,'' published in the July 8, 2011 **Federal Register** (76 FR 40471).

The estimated savings associated with the health care payment and remittance advice transaction is taken from Medicare data. Medicare found that the average estimated cost avoidance in terms of printing and mailing charges was $4.24 per electronic remittance advice transaction when it was sent electronically as opposed to through the mail in paper form.

TABLE 11—BASELINE COST SAVINGS PER TRANSACTION FOR COMMERCIAL AND GOVERNMENTAL HEALTH PLANS (DIFFERENCE BETWEEN NON-ELECTRONIC TRANSACTION AND ELECTRONIC TRANSACTION) IN THREE TRANSACTIONS *

Transaction	Savings per transaction for commercial and government health plans
Eligibility for a health plan	$3.15
Health care claim status	3.78
Health care electronic funds transfer (EFT) and remittance advice (Remittance Advice only)	4.24

* Based on 2012 dollars.

We expect that the use of the HPID will result in greater efficiency and savings across all HIPAA transactions in addition to the three transactions we specifically analyze here. However, we expect that the impact will be considerably less in other transactions because operating rules for these transactions will likely take effect a number of years after the implementation of the HPID.

We estimate an annual increase of 1 (LOW) to 2 (HIGH) percent in the use of the eligibility for a health plan transaction and the health care claim status transaction attributable to the implementation of the HPID over the next 10 years as illustrated in Table 12. We estimate an annual increase of 2 (LOW) to 3 (HIGH) percent in the use of the electronic remittance advice transaction resulting from the adoption of the HPID. These are not annual increases in percentage points, but rather percent increases in the use of electronic transactions from the year before. The impact of the HPID on the electronic health care payment and remittance advice transaction is more than the impact on the other two transactions because NCVHS testimony supported the notion that the greatest impact of a standardized health plan identifier would be on the payment process.[40]

Based on these assumptions, we estimate that the savings to health plans because of increased usage in three transactions will be at least $500,000 within 10 years of HPID implementation. Health plan savings are summarized in Table 13.

[40] Tammy Banks, Director, Practice Management Center and Payment Advocacy, ''Testimony By The American Medical Association,'' National Committee on Vital and Health Statistics Subcommittee on Standards, July 19, 2010.

TABLE 12—ANNUAL COST SAVINGS FOR HEALTH PLAN FROM INCREASE DUE TO HPID IN VOLUME OF THREE ELECTRONIC TRANSACTIONS *

[In millions]

I	II	III	IV	V	VI	VII
	Savings from increase in eligibility for a health plan transaction attributable to HPID		Savings from increase in health care claim status transaction attributable to HPID		Savings from increase in health care payment and remittance advice transaction attributable to HPID (remittance advice only)	
Year	LOW annual cost savings attributable to HPID	HIGH annual cost savings attributable to HPID	LOW annual cost savings attributable to HPID	HIGH annual cost savings attributable to HPID	LOW annual cost savings attributable to HPID	HIGH annual cost savings attributable to HPID
2014	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
2015	31.4	54.6	5.1	8.5	6.4	16.0
2016	36.1	62.8	6.1	10.2	7.7	19.2
2017	41.5	72.2	7.4	12.3	9.2	23.0
2018	44.8	83.0	8.1	14.7	11.0	27.6
2019	48.4	89.7	8.9	16.2	12.4	33.1
2020	52.3	96.8	9.8	17.8	13.8	37.1
2021	56.5	104.6	10.8	19.6	15.5	41.5
2022	61.0	113.0	11.9	21.6	17.4	46.5

Cumulative Annual Cost Savings:
LOW: $534 million.
HIGH: $1,042 million.

* Based on 2012 dollars.

TABLE 13—TOTAL SAVINGS FOR COMMERCIAL AND GOVERNMENTAL HEALTH PLANS *

[In millions]

I	II	III	IV	V	VI
Savings from decrease in pended claims		Savings from increase usage of EDI in three transactions		Total savings for health plans	
LOW	HIGH	LOW	HIGH	LOW	HIGH
$717	$1,433	$534	$1,042	$1,250	$2,475

* Based on 2012 dollars.

4. Savings to Health Care Providers

We have quantified two areas of savings for health care providers. First, time and money will be saved at an administrative-level because of a decrease in claims issues that require manual intervention. Medical practices will experience these administrative savings by virtue of decreased time spent interacting with health plans. Second, material savings will be derived because of an increase in the number of transactions that are conducted electronically, as we explained in our discussion of the potential impact of this rule on health plans.

a. Time Savings for Health Care Providers

One of the main goals of the use of the HPID is to have a consistent identifier for each health plan for use in standard transactions. This lack of a single identifier has resulted in the need for manual intervention to resolve eligibility questions and billing and payment issues when there are inconsistent approaches for identifying health plans. Covered health care providers would no longer have to keep track of and use multiple identifiers for a single controlling health plan. After the initial outlay for changes to their systems, health care providers would be able to simplify their billing systems and processes and reduce administrative expenses.

The HPID would also assist and simplify coordination of benefits. Health plans that have sole or shared fiduciary responsibilities for payment would be more readily identified, and the movement of information among these entities would be enhanced. According to a 2009 study published in Health Affairs, approximately 60 hours per physician per week are spent on average interacting with health plans when the time spent by the single physician, the staff, and the physician practice's administration are totaled.[41] Of the time spent interacting with health plans, 88 percent was spent on authorizations and claims/billing issues.

We believe the implementation of an HPID will eliminate some of the manual intervention that is required when there are questions or errors identifying the entity responsible for eligibility of a patient or the payment of a claim. We estimate that the implementation and use of an HPID by health plans would save a physician's practice a number of phone calls and emails otherwise required to investigate or verify the identifier needed for the health plan. Of the 60 hours reported previously, our estimate would be that 15 minutes to 30 minutes per week—or .4 to .8 percent of the total time spent interacting with

[41] Lawrence P. Casalino, S. Nicholson, D.N. Gans, T. Hammons, D. Morra, T. Karrison and W. Levinson, ''What does it cost physician practices to interact with health insurance plans?'' Health Affairs, 28(4)(2009):w533–w543.

health plans—could be eliminated if the HPID were implemented. We welcome input on our assumption.

Table 14 illustrates the savings if a physician's office spends 15 to 30 minutes a week interacting with health plans. Table 14, Column I shows the number of hours spent per week per physician interacting with health plans, according to the 2009 Health Affairs study. This number represents the sum total of hours spent by the physician, the physician's staff, and senior administrative staff, accountants, and lawyers that support the physician.

Table 14, Column II is the low to high estimate of 15 to 30 minutes (or .4 to .8 percent of the total time spent interacting with health plans) that we estimate would be saved with the implementation of the HPID.

Table 14, Column III is the annual cost for a physician's office of interacting with a health plan, based on time spent and hourly wages of various employees of a physician's office, according to the 2009 Health Affairs study. The wages are adjusted 3 percent annually to account for cost of living increases.

Table 14, Column IV is the estimate of savings generated by decreasing the time spent interacting with health plans by 15 minutes a week (LOW). It is the low estimate of the percentage reduction in time (Table 14, Column II) times the annual cost per physicians of interacting with health plans (Table 14, Column III). Table 14, Column V is the high estimate of savings generated by decreasing the time spent interacting with health plans by 30 minutes a week (HIGH estimate). It is the high estimate of the percentage reduction in time (Table 14, Column II) times the annual cost per physicians of interacting with health plans (Table 14, Column III).

Table 14, Column VII is the low and high estimated savings for all physician offices if their interaction with health plans is reduced by 15 to 30 minutes a week. Table 14, Column VII is the cost avoidance per year per physician (Table 14, Column IV and V) times the number of physicians (Table 14, Column VI). The number of physicians was calculated by taking the average of the projected supply of physicians in physician practices and the projected demand for physicians in physician practices as calculated in ''Physician Shortages to Worsen Without Increases in Residency Training,'' a summary of an analysis by the Association of American Medical Colleges.[42]

Based on our calculations, we anticipate that the time physicians in physician practices will spend per week interacting with health plans will decrease. Due to a lack of baseline data regarding other providers and physicians working in hospitals, our calculations do not reflect a similar anticipated decrease in time for other providers and physicians working in hospitals. We assume, though, that hospitals, because they typically consolidate their billing functions, will have analogous savings to physicians in physician practices, albeit less on a ''per physician'' basis.

TABLE 14—PHYSICIAN SAVINGS THROUGH DECREASE IN TIME INTERACTING WITH HEALTH PLANS *

Year	I	II	III	IV	V	VI	VII
	Hours spent per week per physician interacting with health plans	LOW to HIGH percent of time interacting with health plans (Col I) saved per week per physician attributable to HPID (15 to 30 minutes)	Total annual cost per single physician to interact with health insurance plans	LOW reduction in cost per year per physician attributable to HPID	HIGH Reduction in cost per year per physician attributable to HPID	Number of physicians	LOW to HIGH total savings per year attributable to HPID (in millions)
2014	60	0.4 to 0.8%	$74,605	$0	$0	340,146	$.00
2015	60	0.4 to 0.8%	76,843	320	640	345,173	111 to 221.0
2016	60	0.4 to 0.8%	79,148	330	660	348,638	115 to 230.0
2017	60	0.4 to 0.8%	81,523	340	679	352,103	120 to 239.2
2018	60	0.4 to 0.8%	83,969	350	700	355,568	124 to 248.8
2019	60	0.4 to 0.8%	86,488	360	721	359,033	129 to 258.8
2020	60	0.4 to 0.8%	89,082	371	742	362,498	135 to 269.1
2021	60	0.4 to 0.8%	91,755	382	765	366,561	140 to 280.3
2022	60	0.4 to 0.8%	94,507	394	788	370,625	146 to 291.9
2023	60	0.4 to 0.8%	97,343	406	811	374,688	152 to 303.9
2024	60	0.4 to 0.8%	100,263	418	836	378,752	158 to 316.5
Total							1,330 to 2,659

* In 2012 dollars.

b. Increase in Three Transactions

The second area of savings for providers is the per transaction savings of moving from non-electronic to electronic transactions. We used the same assumptions on the number and rate of increase of three electronic transactions methodology as illustrated for health plans in Table 12. However, the savings per transaction for health care providers differ from the savings that health plans will realize, as reflected in Table 15. For a more detailed description of how we arrived at the savings associated with the eligibility for a health plan transaction and the health care claim status transaction, see the RIA in the ''Administrative Simplification: Adoption of Operating Rules for Eligibility for a Health Plan and Health Care Claim Status Transactions,'' published in the July 8, 2011 **Federal Register** (76 FR 40471). The estimated savings associated with the health care payment and remittance advice transaction were taken from the ''National Progress Report on Healthcare Efficiency: 2010'' at *www.ushealthcareindex.com.*

[42] Summary of ''The Complexities of Physician Supply and Demand: Projections Through 2025, Center for Workforce Studies, AAMC,'' 2008, by the Association of American Medical Colleges, and ''The Impact of Health Care Reform on the Future Supply and Demand for Physicians Updated Projections Through 2025,'' June 2010, AAMC.

TABLE 15—COST SAVINGS PER TRANSACTION (DIFFERENCE BETWEEN NON-ELECTRONIC TRANSACTION AND ELECTRONIC TRANSACTION) IN THREE TRANSACTIONS *

Transaction	Savings per transaction for providers
Eligibility for a health plan	$2.02
Health care claim status	2.42
Health care payment and remittance advice (Remittance Advice)	1.55

* In 2012 dollars.

Table 16 reflects the same assumption that use of the HPID will lead to increased use of three electronic transactions. We estimate an annual increase of 1 (LOW) to 2 (HIGH) percent in the use of the eligibility for a health plan transaction and the health care claim status transaction attributable to implementation of the HPID over the next 10 years as illustrated in Table 15. We estimate an annual increase of 1 (LOW) to 3 (HIGH) percent in the use of the electronic health care payment and remittance advice transaction (in the health care electronic funds transfers (EFT) remittance advice transaction). The savings in each column are a product of the number increase in each transaction, with high and low ranges, multiplied by the cost savings of each move to an electronic transaction detailed in Table 15.

TABLE 16—ANNUAL COST SAVINGS FOR PROVIDERS FROM INCREASE DUE TO HPID IN VOLUME OF THREE ELECTRONIC TRANSACTIONS *

I	II	III	IV	V	VI	VII
	Savings from increase in eligibility for a health plan transaction attributable to HPID		Savings from increase in health care claim status transaction attributable to HPID		Savings from increase in health care payment and remittance advice transaction attributable to HPID/OEID (remittance advice only)	
Year	LOW annual cost savings attributable to HPID (in millions)	HIGH annual cost savings attributable to HPID (in millions)	LOW annual cost savings attributable to HPID (in millions)	HIGH annual cost savings attributable to HPID (in millions)	LOW annual cost savings attributable to HPID (in millions)	HIGH annual cost savings attributable to HPID (in millions)
2014	$0.0	$0.0	$0.0	$0	$0.0	$0
2015	20.13	35.01	3.28	5.46	2.34	5.84
2016	23.15	40.26	3.93	6.56	2.80	7.01
2017	26.62	46.30	4.72	7.87	3.36	8.41
2018	28.75	53.24	5.19	9.44	4.04	10.09
2019	31.05	57.50	5.71	10.39	4.52	12.11
2020	33.53	62.10	6.28	11.42	5.06	13.56
2021	36.22	67.07	6.91	12.57	5.67	15.19
2022	39.11	72.43	7.60	13.82	6.35	17.01

Cumulative Annual Cost Savings.
LOW: $316 million.
HIGH: $601 million.

* Based on 2012 dollars.

To summarize health care provider savings, providers can expect savings from two indirect consequences of the implementation of a health plan identifier, as demonstrated in Table 17: the cost avoidance of a decrease in administrative time spent by physician practices interacting with health plans, and a cost savings for physician practices and hospitals for every transaction that moves from a manual transaction to an electronic transaction.

TABLE 17—TOTAL HEALTH CARE PROVIDER HPID SAVINGS *

I	II	III	IV	V	VI
Savings from decrease in pended claims (in millions)		Savings from increase usage of EDI in three transactions (in millions)		Total savings for providers (in millions)	
LOW	HIGH	LOW	HIGH	LOW	HIGH
$1,330	$2,659	$316	$601	$1,646	$3,260

* Based on 2012 dollars.

c. Savings to Transaction and Software Vendors and Health Care Clearinghouses

None of the studies considered for this analysis was able to quantify the costs and savings, or the return on investment of adopting the HPID for software vendors and health care clearinghouses. As noted previously, we expect that some indirect costs will be borne by health care providers in the form of increased fees from transaction vendors and health care clearinghouses such as upgraded software costs and an increase in volume of claims transactions.

We anticipate that the savings, as well as the costs, to software vendors of upgrading health care provider software will be passed along to their provider clients. We therefore assume that the return on investment for software vendors in implementing the operating rules reflected in our estimates as those for health care providers.

Additionally, since health care clearinghouses work on behalf of health plans and act as intermediaries between health care providers and health plans in regard to electronic transactions, we believe that the savings, as well as the costs, to health care clearinghouses will be the same savings and costs as those expected by health plans.

I. Summary for the HPID and NPI

TABLE 18—HPID SUMMARY TABLE FOR HEALTH CARE INDUSTRY

	I	II	III	IV	V	VI
	Savings (in millions)		Costs (in millions)		Range of return on investment (in millions)	
	LOW	HIGH	LOW	HIGH	LOW (low savings/high costs)	HIGH (high savings/low costs)
Commercial and Governmental Health Plans	$1,250	$2,475	$652	$1,297	−$47	$1,823
Health Care Providers	1,646	3,260	450	900	746	2,810
Total	2,896	5,735	1,102	2,197	700	4,633

J. Regulatory Flexibility Analysis the HPID and NPI

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) requires agencies to describe and analyze the impact of the proposed rule on small entities unless the Secretary can certify that the regulation will not have a significant impact on a substantial number of small entities. According to the Small Business Administration's size standards, a small entity is defined as follows according to health care categories: Offices of Physicians are defined as small entities if they have revenues of $10 million or less; most other health care providers (dentists, chiropractors, optometrists, mental health specialists) are small entities if they have revenues of $7 million or less; hospitals are small entities if they have revenues of $34.5 million or less. (For details, see the SBA's Web site at *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.* Refer to Sector 62—Health Care and Social Assistance).

For purposes of this analysis (pursuant to the RFA), nonprofit organizations are considered small entities; however, individuals and States are not included in the definition of a small entity. In the following discussion, we have attempted to estimate the number of small entities and provide a general discussion of the effects of this proposed rule, and where we had difficulty or were unable to find information, we solicit industry comment.

1. Number of Small Entities and Scope of Analysis

a. Individual ''Prescribers''

As detailed in section IV.B. of this proposed rule, the addition to the requirements for the NPI will impose a time cost to prescribers in terms of applying for an NPI. These individual prescribers are members of an organization, or are employed, subcontracted, or given clinical privileges by an organization. We assume the majority of these prescribers cannot be defined as small entities, because they are individuals, not legal businesses. A small number of prescribers are sole proprietors [43] and may be considered small business entities under the RFA. However, the only cost to prescribers is the cost to obtain an NPI and therefore does not represent a substantive impact. Therefore, we will not be including the impact to individual prescribers in this analysis. We request industry feedback on this assumption.

b. Health Care Providers: Physician Practices and Hospitals

As with our RIA for the HPID, in the category of health care providers, we analyzed physician practices and hospitals only in terms of how they will be impacted by implementation and use of the HPID. (There will be no analysis of the impact to physician practices or hospitals with regard to the addition to the NPI requirements for the reasons described previously.) We did not analyze the impact to nursing and residential care facilities, dentists, or suppliers of durable medical equipment.

We narrowed our analysis to physician practices and hospitals for two reasons: (1) We have very little data on the usage of EDI among dentists, suppliers of durable medical equipment, nursing homes, and residential care facilities. The lack of data for these types of health care providers have been noted in other studies on administrative simplification;[44] and (2) we assume that the greatest costs will be borne by hospitals and physician practices as they conduct the majority of standard transactions. While we believe that some small health care provider entities outside of these two categories may be impacted, albeit in much fewer numbers, we believe the analysis gathered here would be indicative of the costs that we would expect all small health care provider entities to experience. We welcome comment from industry and the public as to our assumptions.

Because each hospital maintains its own financial records and reports separately to payment plans, we decided to report the number of establishments rather than firms. For physician practices, we assumed that the costs to implement the HPID would be accounted for at the level of firms rather than at the individual establishments.

[43] For purposes of this RFA, a sole proprietor may be contracted by other business entities.

[44] ''Excess Billing and Insurance-Related Administrative Costs,'' by James Kahn, in *The Healthcare Imperative; Lowering Costs and Improving Outcomes: Workshop Series Summary,* edited by Pierre L. Yong, Robert S. Saunders, and Leigh Anne Olsen.

According to the U.S. Census Bureau, Detailed Statistics, 2007 Economic Census, there are approximately 220,100 physician practices. The U.S. Census Bureau data indicates that two percent of physician practices have revenues of $10 million or more, therefore approximately 4,400 physician practices are *not* small entities.

Nevertheless, we have decided to consider all physician practices small entities. Our basis for this is the fact that Census Bureau data is calculated from report forms that are sent to only a sample of small employers (less than 10 employees). Therefore, we can assume that the estimates from the Census Bureau are low. The estimated number of physician practices in the Modifications proposed rule (234,222 physician practices) includes physician practices with one to two physicians and is within 6 percent of the total number of physician practices estimated by the Census Bureau. Therefore, we will assume that all physician practices, as calculated by the Census Bureau (220,100), are small entities, and accept a small margin of error.

The 2007 Census Bureau reports that there are approximately 6,500 hospitals. The data indicates that 85 percent of hospitals have sales/receipts/revenues of $10 million or more. While we can assume that, of those 85 percent, some have revenues over $34.5 million; we do not have specific numbers that detail this assumption. Therefore, as with physician practices, we will make calculations on the assumption that all hospitals are small entities.

c. Health Care Clearinghouses and Transaction Vendors

We did not calculate costs and benefits to health care clearinghouses and transaction vendors in this RFA because we assume that any associated costs and benefits will be passed on to the health plans or health care providers, and will be included in the costs and benefits we apply to health plans and health care providers.

d. Health Plans

The health insurance industry was examined in depth in the RIA prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). It was determined, in that analysis, that there were few, if any, ''insurance firms,'' including HMOs that fell below the size thresholds for ''small'' business established by the SBA Health. We assume that the ''insurance firms'' are synonymous, for the most part, with health plans that conduct standard transactions with other covered entities and are, therefore, the entities that will have costs implementing the use of HPIDs. In fact, then, and even more so now, the market for health insurance is dominated by a relative handful of firms with substantial market shares. There are, however, a number of health maintenance organizations (HMOs) that are small entities by virtue of their nonprofit status even though few if any of them are small by SBA size standards. There are approximately 100 such HMOs. These HMOs and those Blue Cross and Blue Shield plans that are non-profit organizations, like the other firms affected by this proposed rule, will be required to obtain and use HPID in standard transactions. Accordingly, this proposed rule will affect a ''substantial number'' of small entities. We estimate, however, that the costs of this proposed rule on health plans do not remotely approach the amounts necessary to be a ''significant economic impact'' on firms with revenues of tens of millions of dollars. Therefore, we do not include health plans in our RFA, but have analyzed the costs and benefits to health plans in our RIA.

We welcome industry and stakeholder input on our assumption in this regard.

2. Cost for Small Entities

In Table 19, we take the information from the impact analysis and break out the costs for both physician practices and hospitals, using the maximum cost of implementation in any one year. As we are treating all health care hospitals and physician practices as small entities for the purpose of this RFA, we allocated 100 percent of the implementation costs reported in the impact analysis for physician practices and hospitals. We used the maximum estimated costs from the RIA. Table 19 shows the impact of the implementation costs of HPID as a percent of the health care provider revenues.

TABLE 19—ANALYSIS OF THE BURDEN OF IMPLEMENTATION OF HPID ON SMALL COVERED ENTITIES*

I	II	III	IV	V
Entities	Total number of small entities	Revenues or receipts (in millions)	Maximum cost of health care EFT standard annual (in millions)	Implementation cost revenue receipts (percent)
Physician practices	220,100	$359,853	$272	0.00076
Hospitals	6,500	729,870	583	0.00080

* In 2012 dollars.

Table 19, Column II shows the number of entities as discussed in this section. Table 19, Column III shows revenues that were reported for 2009 in the Survey of Annual Services (*http://www.census.gov/services/sas_data.html*). Table 19, Column IV shows the costs to health care providers for implementation of the HPID, as described in the RIA. The estimated high range of costs was used. Table 19, Column V shows the percent of the small entity share of implementation costs as a percent of the small entity revenues.

K. Conclusion for the HPID and NPI

We use a baseline threshold of 3 percent of revenues to determine if a rule would have a significant economic impact on affected small entities. The anticipated economic effect of this rule on small entities would not exceed or even come close to meeting this threshold. Based on the foregoing analysis, we certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

However, because of the relative uncertainty in the data, the lack of consistent industry data, and our general assumptions, we invite public comments on the analysis and request any additional data that would help us determine more accurately the impact on the various categories of small entities affected by this proposed rule.

L. Alternatives Considered for the ICD–10

Faced with growing evidence that a group of providers would not be ready for the transition to ICD–10, and the possibility that payment for millions of health care claims would be delayed, we considered a number of options before proposing a 1-year delay in the compliance date in this proposed rule.

1. Option 1: Maintain October 1, 2013 Deadline

Segments of the health care industry have expressed strong support for staying the course regarding the 2013 date. Many health plans, large hospitals, physician practices, and IT vendors have already made large investments upgrading systems, hiring personnel for the transition, and making other preparations for implementation. There is a financial and psychological momentum toward implementing ICD–10 that may be disrupted by a delay. According to the Edifecs poll, ''a potential delay of the ICD–10 compliance deadline could have far reaching—and highly negative—impact to the health care industry's effort to implement the mandate.'' [45]

A major health informatics association, citing the large investments that providers, health plans, academic programs, and others have made in creating new jobs, upgrading systems, deploying new EHR systems, and other efforts has urged no delay in the ICD–10 2013 compliance date.[46] Likewise, due to the long lead time required for textbook development and publication, authors and educational institutions have already changed their textbooks and coding curricula to ICD–10. One university coding program has expressed concern that its 30 coding students would have to revert to learning ICD–9 codes and take additional classes to gain proficiency with ICD–9, at a cost of $2,036 per student, so that upon graduation they will be employable in an ICD–9 environment should the compliance date for ICD–10 be delayed. Other institutions, such as medical schools that include coding as part of their curricula, technical and vocational schools, community colleges and other entities that offer coding training, would experience similar challenges with a delayed ICD–10 compliance date.

Hospitals also report extensive ICD–10 financial investments in information technology systems re-programming, business process changes, and staff training premised upon the October 1, 2013 compliance date. While a major hospital association has advocated retaining the October 1, 2013 compliance date, it still welcomed a review of the date as a delay could benefit smaller hospitals with fewer resources to invest in ICD–10 implementation.[47]

Nevertheless, it is clear that a significant number of health care entities will not be prepared to meet the October 1, 2013 ICD–10 compliance date. Reasons for this vary—entities may not have altered their systems, thoroughly analyzed their processes, changed their forms, prepared for training their personnel, or begun testing their internal systems. Regardless of the reason entities will not be able to achieve compliance, given the substantial effect that delayed claim payments would have on health care delivery industry-wide, a delayed compliance date appears to be warranted.

As demonstrated in the impact analysis in this proposed rule, we anticipate that a substantial number of small providers (medical practices of between 1 to 5 physicians), would not be ready to use ICD–10–CM codes by the October 1, 2013 compliance date. If 25 percent of physician claims were to continue to be submitted using ICD–9 codes after an October 1, 2013 compliance date, millions of claims would likely be returned and physicians might experience devastating cash flow problems. Lack of reimbursement could force practices to shut down, making medical services inaccessible to patients and/or forcing physicians to ask patients to pay up front, out-of-pocket, for medical services, which, aside from being barred by the terms of some insurance programs, would be extraordinarily burdensome to patients.

Although we believe that a majority of the health care industry supports maintaining the October 1, 2013 ICD–10 compliance date and is justly concerned that the ill-preparedness of a minority of the industry might adversely affect its efforts to achieve timely compliance, as we stated in the January 2009 final rule, successful ICD–10 compliance is dependent on all industry segments being ready for ICD–10 at the same time. More importantly, we believe that concern for patient well-being and physicians' continued rendering of health care services must be a prime consideration. We have determined that maintaining the October 1, 2013 ICD–10 compliance date could disrupt significant numbers of physicians' reimbursements, which in turn could jeopardize patient care.

2. Option 2: Maintain the October 2013 Compliance Date for ICD–10–PCS (Procedure Coding) and Delay the Compliance Date for ICD–10–CM Diagnosis Codes Only

We also considered a split implementation alternative: Maintaining the compliance date for ICD–10–PCS, which is used for inpatient hospital procedure coding only, at October 1, 2013, while delaying the compliance date for ICD–10–CM, the diagnosis codes used by physicians, to some later date, for example October 1, 2015. The rationale for this option was that hospitals, with their greater access to resources, would be in a better position to move forward with ICD–10–PCS, which would result in at least partial compliance with the October 1, 2013 date. This option would also afford small providers additional time to become compliant with the ICD–10–CM diagnosis codes.

However, after analysis, we discerned that this option held the potential for penalizing hospitals in that they would effectively have to implement ICD–10 twice: Once in 2013 for ICD–10–PCS and then again in 2015 for ICD–10–CM, increasing their implementation costs. This option also held great potential for confusion among providers and payers.

3. Option 3: Forgo ICD–10 and Wait for ICD–11

The option of foregoing a transition from ICD–9 to ICD–10, and instead waiting for ICD–11, was another alternative that was considered. This option was eliminated from consideration because the World Health Organization, which creates the basic version of the medical code set from which all countries create their own specialized versions, is not expected to release the basic ICD–11 medical code set until 2015 at the earliest.

From the time of that release, subject matter experts state that the transition from ICD–9 directly to ICD–11 would be more difficult for industry and it would take anywhere from 5 to 7 years for the United States to develop its own ICD–11–CM and ICD–11–PCS versions.[48]

[45] Edifecs poll, 2012.

[46] Letter to Kathleen G. Sebelius, Secretary, U.S. Department of Health and Human Services, from American Health Information Management Association (AHIMA), February 23, 2012.

[47] ''CMS Hints at Delay in ICD–10 Implementation Deadline,'' HCPRO Web site, February 14, 2012, *http://www.hcpro.com/HOM-276578-6962/CMS-hints-at-delay-in-ICD10-implementation-deadline.html*

[48] Rhonda Butler, ''Why we can't skip ICD–10 and go straight to ICD–11,'' Healthcare Finance News, March 29, 2012;

Carl Natale, ''Why we're not ready to plan ICD–11 implementation,'' ICD10Watch, February 20,

Continued

4. Option 4: Mandate a Uniform Delay in Compliance Date for ICD–10

The fourth option considered was a uniform delay in the compliance date for both ICD–10–CM and ICD–10–PCS. The advantage to contemplating an across-the-board delay was that it would yield a single compliance date among all industry segments. Contemplating such an option gave rise to a secondary question—what length of delay would be appropriate?

Using the existing October 1, 2013 compliance date as a starting point, we looked at the potential impact of delaying compliance to October 1, 2015. While offering, in effect, an additional 3-year implementation timeline (from 2012 through 2015), a delay to 2015 would have damaging effects on industry and on the transition to ICD–10 in general. The Edifecs poll found that nearly 70 percent of respondents felt that a two-year delay would be either ''potentially catastrophic or cause an unrecoverable failure,'' and that ''a delay of longer than a year will likely freeze budgets, slow down schedules, or stop work altogether.'' [49] A mere 2 percent of Edifecs respondents said there would be a benefit to a 2-year delay. Entities' difficulties would likely include having to modify their preparation now (likely through actions like staff layoffs or terminating contracts), only to have to hire other staff or enter into new or revised contracts later.

Based upon the methodology and baseline estimates from the RIA that follows, we estimate it will cost health plans up to an additional 30 percent of their current ICD–10 implementation budgets for a 1-year delay. We can assume, therefore, that a 2-year delay would be at least double the cost; that is, a 2-year delay would cost at least $13 billion for all commercial and government health plans.

An informal survey of State Medicaid programs also indicated that an October 1, 2015 compliance date may be problematic for some States that are undergoing IT-intensive Medicaid Management Information System (MMIS) transitions that same year.

Extending the ICD–10 compliance date to October 1, 2015 would likely result in having to lift the current code set freeze, as the industry could not wait an additional 2 years for maintenance updates to the medical data code sets. A code set freeze is a suspension of updates to code sets, in this case, ICD–9. Updates to code sets are usually necessary on an annual basis in order to encompass new diagnosis and procedure codes that capture new technologies or diseases. The ICD–9–CM Coordination and Maintenance Committee implemented a partial code set freeze of the ICD–9–CM and ICD–10 codes prior to the October 1, 2013 ICD–10 compliance deadline. On October 1, 2012, there will be only limited code updates to both the ICD–9–CM and ICD–10 code sets to capture new technologies and diseases as required by section 503(a) of Pub. L. 108–173. On October 1, 2013, there will be only limited code updates to ICD–10 code sets to capture new technologies and diagnoses as required by that same provision, while no updates will be made to the then-obsolete ICD–9–CM. On October 1, 2014, regular updates to ICD–10 will begin. For more information on the code set freeze, see *http://www.cms.gov/ICD9ProviderDiagnosticCodes/Downloads/Partial_Code_Freeze.pdf.*

Lifting the code set freeze would result in the release of potentially thousands of changes to the ICD–10–CM and ICD–10–PCS code sets, all of which would have to be re-programmed into systems in order to be ready for an October 1, 2015 compliance date, at considerable industry cost. The Medicare fee-for-service health plan estimated that the cost for re-programming just one of its systems due to a code set freeze lift would result in, at minimum, $1 million in additional expense. If each of the nation's approximately 1,887 health plans incurred a similar cost, it would translate into a minimum additional expense of nearly $2 billion.

A 2-year delay in the ICD–10 compliance date may also signal a lack of HHS' ICD–10 commitment, potentially engendering industry fear that there could be another delay in, or complete abandonment of, ICD–10 implementation, with subsequent heavy financial losses attributable to ICD–10 investments already made. Industry representatives also expressed concern about the loss of momentum in progress toward ICD–10 compliance that would result from a 2-year compliance extension.[50]

5. Conclusion

We believe a 1-year delay in compliance with ICD–10–CM and ICD–10–PCS achieves a balance between the needs of those who have already taken the initiative to plan for on-time compliance with ICD–10 and the need for small providers and small hospitals to have additional time to become ICD–10 compliant. While not without additional costs, a 1-year delay to October 1, 2014 represents what we consider to be a reasonable compromise. Short of maintaining the 2013 date, delaying ICD–10–CM and ICD–10–PCS by 1-year does the least to disrupt existing implementation efforts, while affording the small provider community an additional year to become compliant. A 1-year delay does not significantly penalize those that have made significant investments to become prepared to implement ICD–10 and better maintains momentum than would a 2-year delay.

Any ICD–10 delay decision must be accompanied by increased industry and Departmental efforts, including further outreach and education, and joint pilot testing, to ensure that small providers and hospitals achieve compliance. Additionally, a 1-year delay means that the current code freeze—which was not contemplated in either the ICD–10 proposed or final rules—could be maintained, avoiding costly systems reprogramming. Finally, as opposed to the likely significant impact of a possible 2-year delay, a 1-year delay allows the industry to maintain momentum already achieved in readying for the current October 1, 2013 compliance date.

We invite industry and stakeholder comment on all of our ICD–10 compliance date alternatives and assumptions.

M. Impacted Entities—ICD–10

All covered entities may be affected by a delay in the compliance date of ICD–10 as proposed in this rule. Covered entities include all health plans, health care clearinghouses, and health care providers that transmit health information in electronic form in connection with a transaction for which the Secretary has adopted a standard.

Table 7 outlines the number of covered entities that may be affected by a delay in ICD–10, along with the sources of those data. These are the same entities that will be affected by HPID.

While covered entities are required to transition to ICD–10, many other entities not required to abide by HIPAA (such as workers' compensation

2012, *http://www.icd10watch.com/,* ''ICD–10 Frequently Asked Questions,'' American Health Information Management Association (AHIMA), *http://www.ahima.org/ICD10/faqsall.aspx#36.*

[49] Edifecs poll, 2012.

[50] Edifecs poll, 2012: And February 28, 2012 Letter In Regards to ICD–10, Implementation Date Delay to Denise M. Buenning, Director, Administrative Simplification Group, Office of E–Health Standards and Services (OESS), from Maria Buonos, Business Development Manager, Wolters Kluwar Law & Business.

programs and automobile and personal liability insurers) currently use ICD–9 for a variety of purposes. Because their operational and business needs often intersect with covered entities, for practical and business purposes these other entities may voluntarily transition to ICD–10 alongside HIPAA covered entities. ICD codes are used in nearly every sector of the medical and health industry.

N. Scope and Methodology of the Impact Analysis for ICD–10

This impact analysis estimates the costs and benefits of a proposed delay in required compliance with ICD–10. We are analyzing only the impact of a delay, not the impact of ICD–10 implementation that we addressed in the August 2008 ICD–10 proposed rule (73 FR 49476) and the January 2009 ICD–10 final rule (74 FR 3328).

Despite the broad utilization of ICD codes that extends beyond covered entities, with one exception our analysis is restricted only to those entities as only they fall under the auspices of this rule. With respect to health care providers, only health care providers that transmit health information in electronic form in connection with a transaction for which the Secretary has adopted a HIPAA transaction standard are considered covered entities. The one area where we provide additional analysis is the cost to educational institutions to educate students being trained in ICD–10 coding because such training costs have been of particular concern to industry and have been included in the August 2008 and January 2009 ICD–10 proposed and final rules' cost analyses.

Moreover, while we assume that a delay in the implementation of ICD–10 will affect a broad range of health care providers, as illustrated in Table 7, we only examine the costs and benefits of a delay on two types of health care providers: Hospitals and physician practices. We do not analyze the impact on other industry sectors, including, but not limited to, nursing and residential care facilities, dentists, durable medical equipment (DME) suppliers, or pharmacies for various reasons. Consistent with our previous impact analysis in the 2008 ICD–10 proposed rule, we continue to have very little data on the use of EDI among dentists, DME suppliers, nursing homes, and residential care facilities. The lack of data for these types of health care providers has been noted in other studies on administrative simplification.[51] We assume that the greatest benefits will be gained by hospitals and physician practices as they conduct the majority of standard transactions, although it cannot be assumed that the costs will necessarily be borne by physician practices and hospitals only. We have not included an analysis of the impact on pharmacies because pharmacies typically do not use ICD codes in their routine course of business so we assume there is no impact on pharmacies. We welcome comment regarding our assumptions.

We include health care clearinghouses and transaction vendors as affected entities in Table 7. Transaction vendors are entities that process claims or payments for other entities such as health plans. Transaction vendors may not meet the HIPAA definition of health care clearinghouse, but, as used in this context, health care clearinghouses would constitute a subset of transaction vendors. Payment vendors would be a type of transaction vendor—a transaction vendor that ''associates'' or ''reassociates'' health care claim payments with the payments' remittance advice for either a health plan or provider. For our purposes, transaction vendors do not include developers or retailers of computer software, or entities that are involved in installing, programming or maintaining computer software. Health care clearinghouses and transaction vendors will be impacted because they will need to transition their systems to accept ICD–10 codes. However, we did not calculate costs and benefits to health care clearinghouses and transaction vendors in this cost analysis because, as in our previous impact analysis in the August 2008 ICD–10 proposed rule, we assume that any associated costs and benefits will be passed on to the health plans or providers and will be included in the costs and benefits we apply to health plans or providers.

Although self-insured group health plans meet the HIPAA definition of ''health plan,'' we did not include them in this impact analysis. While self-insured group health plans will be required implement ICD–10, we assume that, with a few exceptions, such plans do not send or receive HIPAA electronic transactions because most are not involved in the day-to-day activities of a health plan and outsource those services to TPAs or transaction vendors.

However, we do include TPAs in this RIA. Although TPAs do not meet the definition of ''health plans'' and therefore are not required by HIPAA to use code sets such as ICD–10, as a practical matter they will be required to make the transition in order to continue to conduct electronic transactions on the part of self-insured plans. However, the impact of a delay of the compliance date of ICD–10 on TPAs will be similar to the commercial insurer cost/benefit impact profile since they serve a similar function and will have to implement and test their systems in the same manner as health plans. Therefore, when we refer to ''commercial health plans'' in this RIA we will be including TPAs, and we include all TPAs in the category of ''small health plans'' in the RFA.

Software vendors will incur considerable responsibility and cost with respect to ICD–10 implementation, but we do not analyze the cost of delay to software vendors as they ultimately pass their costs to their clients.

O. Cost Avoidance of a 1-Year Delay in the ICD–10 for the Health Care Industry

Our analysis of industry benefit is based on cost avoidance. That is, we anticipate that there will be greater costs associated with the current compliance date for ICD–10 of October 1, 2013 than if the compliance date were to be delayed 1 year, as proposed in this rule. Therefore, our analysis will demonstrate the costs associated with the current compliance date of October 2013, and apply those as savings or benefits attributable to a delayed compliance date.

The assumption behind these savings is that a specific number of physicians and hospitals will not be prepared to use ICD–10 by the compliance date of October 1, 2013. This lack of readiness would engender a number of costly consequences.

Estimates on the benefit of a 1-year delay are subject to considerable variation. A delay in the ICD–10 compliance date increases the opportunity for a successful, timely transition and provides an opportunity to reduce disruptions in health care delivery and payment. A basic assumption in this projection of a benefit is that entities will take the 1-year delay to become compliant and to conduct robust testing as discussed previously. This is possible, but by no means inevitable, even if a vigorous public/private campaign is undertaken to promote and assist with compliance and testing.

[51] ''Excess Billing and Insurance-Related Administrative Costs,'' by James Kahn, in *The Healthcare Imperative; Lowering Costs and Improving Outcomes: Workshop Series Summary,* edited by Pierre L. Yong, Robert S. Saunders, and Leigh Anne Olsen, Institute of Medicine of the National Academies, the National Academies Press, Washington, DC: 2010.

In order to make these projections on cost avoidance, we must first estimate the number of physicians and hospitals that we expect will not be capable of successfully making the transition to ICD–10 on October 1, 2013 such that that their claims would be rejected or returned by health plans. We base our assumptions on CMS' recent assessment survey. The survey was an assessment of health care providers, payers, and vendors to determine their awareness of and preparation for the transitions to ICD–10 and Version 5010. The research was conducted November 1 through December 5, 2011. Table 20 illustrates the number of survey participants from the specific health care entity:

TABLE 20—CATEGORIES OF PARTICIPANTS OF CMS READINESS SURVEY

Providers Including hospital and pharmacy chain administrators and health care practice managers	*Payers* Including directors or higher at health insurance companies, managed care organizations, and pharmacy benefits managers	*Vendors* Including managers at health IT system developers, billing services and clearing houses, outlined as follows:
192 = Provider practices with 10 or fewer physicians.	45 = Private payers	33 = Software vendors
45 = Provider practices with 11 or more physicians.	43 = Public payers (for example, Medicaid, TRICARE).	2 = Clearinghouse
50 = Small hospitals with 99 or fewer beds	13 = Other insurer (for example, property and casualty).	22 = Third party biller
117 = Large hospitals with 100 or more beds		33 = Third party administrator
Total: 404 providers	101 payers	90 Vendors

The questions in the survey were aimed at assessing the entities' self-reported readiness. We believe the question of compliance by October 1, 2013 is a good baseline from which to draw estimates, specifically with regard to providers, approximately a quarter of whom stated that they will not be compliant by the October 1, 2013 compliance date. In general, the survey found no significant differences in the responses based on the size or type of provider, payer or vendor.[52] Table 21 illustrates the self-reported assessments of readiness for ICD–10 among providers and the other sectors. Refer to Table 20 for descriptions of the sectors.

TABLE 21—SUMMARY OF CMS READINESS SURVEY RESPONSES

	Will be compliant by October 1, 2013 (percent)	Additional percentage will be compliant by December 31, 2013 (percent)	Do not know when they will be compliant (percent)	Do not plan on being compliant (percent)
Providers	74	14	11	1
Payers	72	17	4	8
Vendors	78	8	13	1

This RIA will base the benefits of the proposed delay of the compliance date of ICD–10 on cost avoidance, as opposed to an actual financial savings or cost savings. That is, we are proposing that, by delaying the compliance date by 1 year, a number of costly, predicted consequences will be avoided. Therefore, we use the survey results from providers as our baseline for estimating the issues that may arise if the compliance date remains October 1, 2013. The providers must first code and initiate transactions with ICD–10. Ultimately, the costs of noncompliance—returned unpaid claims—will be borne by the providers.

Based on the CMS readiness survey, we will use the percentage of providers who believed they would not be compliant by October 1, 2013 (26 percent) as our high estimate and the percentage of providers who believed they would not be compliant by December 31, 2013 (12 percent) as our low estimate. We use 12 percent as the low estimate because that percentage seems to indicate that only 12 percent of providers believe they will miss the compliance date by more than 3 months. It is reasonable to assume that, with some tools and careful planning, some to all of the 14 percent of providers that believe they are within 3 months of making the October 1, 2013 could be assisted in meeting the compliance date. Therefore, we estimate that 12 to 26 percent of providers will not have achieved ''readiness'' by the October 1, 2013 compliance date.

We recognize that the providers that were surveyed in the CMS readiness survey do not represent all the various categories of providers, and did not include, for example: dentists, chiropractors, optometrists, mental health practitioners, substance use treatment practitioners, speech and physical therapists, podiatrists, home health care services, other ambulatory health care services, resale of health care and social assistance merchandise (durable medical equipment), and nursing and residential care facilities not associated with a hospital. However, as the survey did not find significant differences[53] between the categories of providers surveyed, we will assume that the providers in the categories that were not surveyed would have similar experience with October 2013 readiness for ICD–10. Further, physician practices and hospitals submit the bulk of total

[52] Differences among provider subgroup categories are reported in the CMS Readiness Survey; however, for many questions and response options, the base sizes of respondents are too small to be eligibilityfor significance testing.

[53] Differences among provider subgroup categories are reported in the CMS Readiness Survey; however, for many questions and response options, the base sizes of respondents are too small to be eligibility for significance testing.

health care claims. Therefore, we have based our estimates of the cost of not delaying the compliance date of ICD–10 on the projection that 12 to 26 percent of providers will not be ready or will not have appropriately tested for implementation of ICD–10 by October 1, 2013.

We also recognize that the survey does not represent a statistically valid sample of providers, but we have no other recent data with which to base our readiness estimates. We welcome industry input and comment on our assumptions with regard to the readiness of covered entities.

The total savings attributable to the 1-year compliance date delay is based on the premise that providers who are not ready for ICD–10 will submit claims to payers that will be automatically returned beginning on the October 1, 2013 compliance date. Providers will then have to manually crosswalk ICD–9 to ICD–10 codes and ostensibly submit paper claims. (Alternately, providers who have not readied their systems or processes may proactively submit paper claims using ICD–10 on October 1, 2013. We assume that the cost to these providers to manually crosswalk will entail similar costs to what would be required to resubmit returned claims, as the manual task will be similar in nature.) We calculate the cost avoidance of a 1-year delay in the compliance date of ICD–10 based on two probable scenarios: Returned claims will: (1) Cause expensive manual intervention on the part of both providers and health plans in order for the ''not ready'' providers to be paid; and (2) financially impact providers by potentially requiring them to take out loans or apply for lines of credit to be able to continue to provide health care in the face of delayed payments. We apply calculations to each of these scenarios in the analysis that follows. Although the cost to manually process returned claims will ostensibly occur from, roughly, October 1, 2013 through March, 2014, for simplicity sake our calculations reflect a cost avoidance that is calculated for 1 year only—the year 2014.

A halt to the payment process for 12 to 26 percent of all providers has a greater effect than requiring manual intervention and requiring business loans or lines of credit. In some cases, a payment delay may pose a serious threat to the continued operation of some providers. For example, many health care safety net clinics operate with no more than 30 to 60 days of cash on hand, so any prolonged delay would threaten such entities' viability.

We also anticipate that health care services for a great number of patients will be adversely affected or interrupted because providers will need to spend more time to obtain health care claim payments leaving less time to render health care services.

1. Cost Avoidance: Manual Processing of Returned Claims

Using the estimate of 12 to 26 percent of providers who will not be ICD–10 compliant on October 1, 2013, we have calculated that 58 to 126 million claims per month will be returned as unprocessable across the industry. We have estimated the cost of returned claims for health plans and for physician practices and hospitals that would follow the implementation of ICD–10 in Table 22, assuming that providers could not electronically transmit claims with ICD–10 codes for 6 months past an October 1, 2013 compliance date. From this calculation, based on the following assumptions, we estimate the cost to the health care industry to manually process returned claims for 6 months after an October 1, 2013 compliance date to be approximately $2 to $5 billion. This is based on the following assumptions:

- The total number of health care claims in 2013 is projected to be 5.8 billion. This is an average of the low and high range estimates of total claims as calculated in the Modifications proposed rule.
- We use the percentage of providers that project they would not be compliant on October 1, 2013 to calculate the percentage of claims that will be returned (12 to 26 percent). This is a rough equivalency. However, the survey assessed both large and small physician offices and hospitals and found no significant difference in their readiness. As stated previously, we have projected the readiness of physician practices and hospitals, as estimated by the CMS readiness survey, as the readiness of all other providers (dentists, etc.). We believe the range of the estimate accounts for the great number of variables and unknowns inherent in this kind of calculation.
- We use the cost of pended claims to calculate the cost to health plans of returned claims. Returned claims are claims that will be automatically returned by health plans because their systems will not be able to accept the ICD–9 codes that the non-compliant providers will submit. Returned claims, in and of themselves, have no cost to health plans. Pended claims are claims that require manual intervention by the health plan to be processed for payment. While we assume that 12 to 26 percent of all claims will be returned, we assume that these claims will be followed up by providers with calls or contacts with the health plans. Ultimately, it is probable that health plans will have to manually intervene with the claims submitted in ICD–9, and therefore the cost of these returned claims will be similar to the cost of pended claims for health plans. The cost to health plans for manually processing a pended claim is $2.30 per claim.[54]
- According to the Medical Group Management Association (MGMA), the staff time required to manually process a returned claim is 15 minutes,[55] at a cost of approximately $4.14 for labor, a factor derived from the Bureau of Labor Statistics.[56] This includes staff time spent to correct the error and resubmit claims that are returned.

We are basing our estimates on the cost to manually process health care claims, both to the provider and to the health plan. However, it should be clear that these claims, so long as they are otherwise properly payable, would ultimately be paid. The impact to providers is not that they will lose money from claims altogether. Rather, it will take costly staff time for the providers to resubmit properly coded claims in order to receive payment, and it will take costly staff time for the health plan to manually process and pay the claims. We welcome comments on this analysis and these assumptions.

[54] ''An Updated Survey of Health Care Claims Receipt and Processing Times,'' May 2006, American Health Insurance Plans (AHIP) Center for Policy and Research. Cost in 2006 was $2.05 per claim. We have adjusted the cost to 2012 dollars.

[55] ''Project Swipe IT Savings Model,'' 2009, citing a LEARN Research median figure.

[56] For billing and posting clerks in physician offices, Department of Labor, 2010 dollars.

TABLE 22—COST AVOIDANCE IN 2014 FOR HEALTH PLANS AND PROVIDERS ATTRIBUTABLE TO A DELAY IN THE COMPLIANCE DATE OF ICD–10 *

LOW to HIGH number of claims returned per month	LOW to HIGH cost of processing returned claims manually for health plans over 6 months	LOW to HIGH cost of returned claims for providers over 6 months	LOW to HIGH total over 6 months
58 to 126 million	$800 to 1,700 million	$1.5 to 3 billion	$2.2 to 4.7 billion

* Calculated in 2012 dollars.

2. Cost Avoidance: Interest on Loans and Lines of Credit

The time between when a provider originally submits the claim and when the provider finally gets paid will be considerably longer than if the claim were an electronically submitted ''clean'' claim; that is., a claim for which no additional information or intervention is needed. During this time, providers, specifically small physician practices, will need to have cash on hand in order to ''keep the doors open'' by paying salaries, staying current with contract and lease obligations, purchasing equipment and medicines, and maintaining the physical plant. In some cases, in order to continue as a health care provider, this will require a business loan or a line of credit with interest.

In Table 23, we estimate the costs in terms of interest if 12 to 26 percent of physician practices were required to take out a loan in order to continue to provide health care services. We use the following assumptions in the calculation:

- Using data from the National Health Expenditures Projections 2010 to 2020, we calculate the average expenditure per physician practice.[57]
- We assume that 12 to 26 percent of physician practices (or 28,107 to 60, 898 providers who would not be ready for the ICD–10 transition) times the average expenditure per physician practice over half a year would be equal to the monetary amount in payments that would be delayed.
- As per the most recent estimate by the Federal Reserve,[58] we use 7.6 percent as the average interest rate on a small business loan from $100,000 to $1 million.

Based on these assumptions, we estimate the cost avoidance for physician practices to be between $1.4 to $3 billion if interest on loans to cover delayed payments were to accumulate over 6 months. Although these avoidable costs will ostensibly occur at the end of 2013 through 2014, for simplicity sake we have calculated the cost avoidance as occurring in 2014.

For this calculation, we make no distinction between large or small physician practices, though we assume that the 12 to 26 percent of providers that may not be ready for the October 1, 2013 compliance date are mostly small physician practices. Because we make no distinction between the size of physician practices, however, our cost avoidance may be high because we are basing our calculation on an average dollar amount per physician practice that will be delayed. It is likely that the average expenditure per physician practice is much higher than the actual expenditure per small physician practices. While there is a high level of uncertainty in terms of all of our assumptions, we think it illustrative to make the calculation in order to demonstrate the affect that a delay in payments will have on small physician practices. In this RIA, we only account for interest on loans taken out by the 12 to 26 percent of providers that do not anticipate being compliant with ICD–10 to cover delayed payments. We did not account for any possible interest accrued by payers that retain claim payments in our calculations, because we do not have sufficient information on the financing vehicles used by payers to pay claims. We welcome comments on our assumptions and calculations.

TABLE 23—COST AVOIDANCE IN 2014 FOR PHYSICIAN PRACTICES BASED ON INTEREST ON BORROWED FUNDS

Percent of providers that will not be ready for October 1, 2013 compliance date	Expenditure over six months per physician practice in millions = (annual expenditure on physician practices) divided by (# of physician practices) divided by 2	LOW to HIGH amount of delayed payments over a six month period in millions (% not ready * number of physician practices) * (expenditure per practice)	Avg Annual interest rate on small business loans (Federal Reserve, 2011)	LOW to HIGH Cost to providers in interest in millions
12% to 26%	$1.3	$36,450 to $78,975	0.076	$1,385 to $3,000

* In 2012 dollars

P. Costs for ICD–10

The cost of a 1-year delay falls on the health care entities that are already far along on their preparation for ICD–10. In summarizing its February 2012 poll, Edifecs noted that:

''Many entities have brought ICD–10 subject matter experts on board with defined term contracts. A 1-year delay means entities will have to choose between two unpleasant scenarios: Either extend the contract or terminate the contract* * * Most entities will likely choose [to extend the contract] and retain the expertise they already have.

[57] The Center for Medicare & Medicaid Services (CMS), ''National Health Expenditure Data,'' *https://www.cms.gov/NationalHealthExpendData/.*

[58] ''Small Business Rate Report,'' Friday, March 16, 2012, *http://www.businessweek.com/smallbiz/resources/rate_report/lenders.htm.*

Many are also concerned about the added costs of maintaining technology resources, such as test regions, for an extended time period. Unfortunately, this means most organizations will incur a much greater cost to implement ICD–10 than originally anticipated.'' [59]

1. Costs of a 1-Year Delay of Implementation of ICD–10 for Health Plans

a. Cost for Commercial Health Plans and TPAs

Health plans are a varied group in terms of size, and the cost of a delay is calculated using a range that reflects this variance. We assume that system costs for health plans to transition to ICD–10 have already been budgeted and funds already spent. A delay of a year for ICD–10 compliance primarily will allow entities more time to thoroughly test, but the testing and the continued maintenance of contracts and personnel required for the transition will be 1 year longer than was originally budgeted. In fact, one of the main issues for entities that argue against a delay is the concern that their companies would divert funds currently dedicated to the transition to ICD–10 to other priorities.

We use the following assumptions in calculating the costs for health plans of a 1-year delay in the ICD–10 compliance date.

• We assume that continued training, testing, and retention of personnel and contracts will cost plans an additional 10 to 30 percent of what health plans have already budgeted on the ICD–10 transition to date. We have based this range approximately on the Edifecs poll. The Edifecs poll found that, ''Forty-nine percent estimated that every year of delay would increase their required budget between 11 and 25 percent, while another 37 percent estimated the increase would be somewhere between 26 and 50 percent.'' [60] We summarize this by approximating that nearly 86 percent of respondents of the Edifecs poll would agree that the cost of a 1-year delay is at least in the range of 10 to 30 percent of currently budgeted implementation costs.[61]

• We analyzed the costs that were estimated in studies by the HayGroup, Inc. (2006), [62] the Robert E. Nolan Company (2003) [63] the RAND Corporation (2004),[64] and AHIP (2010).[65] The estimates from the various studies on the costs to health plans are summarized in Table 24. These studies were authored before ICD–10 implementation began. Since these studies, we have actual health plan costs dedicated to the transition to ICD–10. However, we used some of the calculations that those studies employed in order to project the experience of a few health plans to the larger universe of all health plans.

TABLE 24—ESTIMATED COST TO HEALTH PLANS FOR IMPLEMENTING ICD–10 ACCORDING TO STUDIES

Study	Estimated Total Cost to Health Plans (in millions)	
	LOW	HIGH
Nolan (2003)	$432	$913
RAND (2004)	150	363
Haygroup (2006)	384	868
ICD-10 Proposed Rule (2008) *	110	274
AHIP (2010) **	2,000	3,000

* Estimate under ICD–10 Proposed Rule does not include training costs.

** AHIP study provided costs for specific sized health plans. We have projected those costs onto all the health plans.

• As a baseline, we use the analysis of ICD–10 costs conducted by the HayGroup, Inc. on behalf of AHIP in 2006. The HayGroup study analyzed the other ICD–10 cost studies that had been published up to that point and summarized their shared conclusions, including studies conducted by the Robert E. Nolan Company (2003) [66] and RAND Corporation (2004).[67] The HayGroup estimated implementation of ICD–10 would cost national health insurers between $324 to $748 million, plus about 20 percent more in training costs. (The HayGroup estimate was approximately the average of the Nolan and Rand estimates.) The HayGroup had a high estimate for national health plans of $25 million for implementation (plus an implied $5 million for training). Recently, however, national health plans have announced that their budgets for ICD–10 add up to nearly $100 million.[68]

In other words, the HayGroup high estimate appeared to be off by a factor of four in its projections. As illustrated in Table 25, we use $100 million as the high cost of implementing ICD–10 for national health plans, and $50 million as the low cost. This cost includes both system implementation and training. From that baseline, we have attributed costs for multi-regional, large, mid-sized, and small health plans, proportionate to the costs that are reflected in the HayGroup estimate.

• We calculate 10 to 30 percent of the total costs of health plans' ICD–10 system implementation and training as the range of costs for a 1-year delay.

• For simplicity sake, we have calculated all costs as if they occurred in the calendar year 2014.

Health plans made and continue to make a large investment in preparing for ICD–10 based on the expectation that there would be a return on investment from the transition to a more robust code set. A 1-year delay in the compliance date of ICD–10 will also postpone the expected time when health plans can expect to see a return on these investments (ROI). This delay in ROI will likely have negative impacts on health plans in terms of their business plans, budgeting, and investor relations. Because of the uncertainties in predicting impacts of this sort, we have not attempted to quantify any impact resulting from a delay in ROI for health plans. We welcome industry comment or guidance on impacts of this category.

[59] Edifecs poll, 2012.

[60] *Ibid.*

[61] The Edifecs poll found that ''Forty-nine percent estimated that every year of delay would increase their required budget between 11 and 25 percent, while another 37 percent estimated the increase would be somewhere between 26 and 50 percent.''

[62] ''Examining the Cost of Implementing ICD–10,'' October 12, 2006, White Paper Prepared by Thomas F. Wildsmith, HayGroup, Inc. on behalf of American's Health Insurance Plans.

[63] ''Replacing ICD–9–CM with ICD–10–CM and ICD–10–PCS: Challenges, Estimated Costs and Potential Benefits,'' October, 2003, prepared by Robert E. Nolan Company, October, 2003.

[64] Libicki, Martin and Brahmakulam, Irene, ''The Costs and Benefits of Moving to the ICD–10 Code Sets,'' March 2004, RAND Corporation, Prepared for the Department of Health and Human Services.

[65] ''Health Plans' Estimated Costs of Implementing ICD–10 Diagnosis Coding,'' September, 2010, America's Health Insurance Plans, Center for Policy & Research.

[66] Nolan, 2003.

[67] Libicki, 2004.

[68] Joseph Zubretsky, Aetna Chief Financial Officer and Senior Executive Vice President. Aetna Fourth Quarter 2011 Earnings Call Webcast (transcript), Feb. 1, 2012. Wayne S. Deveydt, WellPoint Chief Financial Officer and Executive Vice President. WellPoint Fourth Quarter 2011 Results Conference Call (transcript), Jan. 25, 2012.

TABLE 25—COST IN 2014 OF A ONE-YEAR DELAY IN THE COMPLIANCE DATE OF ICD–10 *

Health insurer categories	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9
	Number of health plans	LOW total cost per health plan (in millions)	HIGH total cost per health plan (in millions)	LOW total implementation/training for all health plans in category (Col. 1 * Col 2)	HIGH total implementation/training for all health plans in category (Col. 1 * Col. 3)	LOW percent of total cost for one year delay	HIGH percent of total cost for one year delay	LOW estimate of one-year delay (in millions)	HIGH estimate of one-year delay (in millions)
National	6	$50.40	100.80	$302.40	$604.80	10	30	$30.24	$181
Multi Regional	6	24.00	40.32	144.00	241.92	10	30	14.40	73
Large	75	14.40	24.19	1080.00	1814.40	10	30	108.00	544
Mid-Sized	325	3.60	6.05	1170.00	1965.60	10	30	117.00	589
TPAs and Small Health Plans	2166	1.20	2.02	2599.20	4366.66	10	30	259.92	1310
Total								530	2,698

* Calculated in 2012 Dollars.

b. Cost of a One-Year Delay for CMS Health Plans

The Medicare program reports that it is prepared to be ICD–10 compliant on October 1, 2013. CMS components affected by an ICD–10 transition delay estimate that there will be additional costs for extending contracts for systems programming and testing work and extended staff training and associated development costs. It is estimated that a 1-year delay in ICD–10 compliance would be reflected by additional work at an estimated total cost of $5 to $10 million in addition to funding already requested for the coming fiscal years.

c. Cost of a One-Year Delay in the Compliance Date of ICD–10 for State Medicaid Agencies

State Medicaid Agencies (SMAs) were queried informally during routine status update calls in February 2012 regarding potential mitigation strategies for ICD–10 implementation. Thirty-nine SMAs responded, representing all regions of the country from predominantly rural to densely populated States. We have extrapolated from these responses as best we could to present a quantitative assessment of costs and benefits.

The responses were clearly split between 46 percent predicting more benefits than detriments to a delay in the compliance date of ICD–10 and 37 percent indicated that any delay would prove more detrimental than beneficial to their transition to ICD–10. Another 10 percent specifically indicated a delay of 1 year would be preferred even though a 1 year delay was not a specific option they were asked to consider. Of the 46 percent of States that indicated benefits to delay, many cited opportunities to improve testing and risk mitigation strategies. Another important benefit seen was the ability to spread out implementation costs over one or more additional fiscal years. A few indicated they would slow or even stop their existing efforts.

Of the 37 percent of States reporting indicated any delay would be detrimental, most indicated additional costs associated with maintaining or sustaining ICD–10-related contracts and staff resources and potential risks for significant losses of momentum and funding. The 10 percent of SMAs opposed to a delay longer than 1 year expressed concerns that longer delays would put funding and the priority status of ICD–10 projects at risk.

One predominantly rural SMA estimated that a 1-year delay could potentially result in a cost increase of over $4 million to their overall project. This increase would be due, primarily, to costs associated with maintaining contracts and the project staffs.

Two SMAs specifically reported significant numbers of providers in the States that were lagging in preparation and planning. Additionally, they indicated the complications with the Version 5010 transition is resulting in less time and fewer resources available for ICD–10. Many of the resources that would have been working on ICD–10 remediation were still committed to the Version 5010/D.0 implementation for both SMAs and many providers.

We note that the types of concerns elicited by SMAs were very similar to those expressed in the Edifecs poll. The further along a SMA was in its implementation, the more likely it was to view a delay as being costly or burdensome and to characterize delays longer than a year as placing their conversion efforts at great risk for losses of funding and key resources. At the same time, many felt they could make good use of a 1 year delay to delay to improve the quality of their testing and risk mitigation strategies.

Those most supportive of delay were those SMAs with less mature projects and with few committed resources.

In Table 26, we calculate the cost to SMAs of a 1-year delay in the compliance date of ICD–10. We use the following assumptions:

- Based on the informal poll of SMAs, we assume that 37 percent or 20 SMAs would be ready for the October 1, 2013 compliance date. Therefore, the assumption is that 21 SMAs would be affected negatively by a delay.
- We assume that $4 million is the low estimate for a cost increase, as exemplified by the rural State that provided that estimate, while $7 million is the high estimate for a cost increase, as reported by an SMA. The high estimate is derived from a SMA that anecdotally described its costs per year of delay. For simplicity sake, we have calculated all costs as occurring in calendar year 2014.

TABLE 26—COST IN 2014 TO STATE MEDICAID AGENCIES OF A ONE-YEAR DELAY IN THE COMPLIANCE DATE OF ICD–10 *

Number of State Medicaid that would be negatively affected	LOW cost of a one-year delay per state agency in millions	HIGH cost of a one-year delay per state agency in millions	LOW cost of a one-year delay for Medicaid agencies in millions	HIGH cost of a one-year delay for Medicaid agencies in millions
21	$4	$7	$83	$145

* In 2012 dollars.

2. Cost of a 1-Year Delay for Providers

We expect that many, if not most, hospitals and large provider organizations have already spent funds in preparation for the ICD–10 transition. As with health plans, any delay in compliance date will add costs because large providers must maintain the personnel and renegotiate contracts necessary to lengthen preparations an extra year. Likewise, large providers must maintain technological resources for an extra year.

Although the expectation is that providers will conduct more robust and extensive testing than what may have been originally planned, to the extent possible we have not included any testing costs in our analysis of provider costs attributable to a 1-year delay. While continued maintenance of test regions and resources dedicated to testing will be costly with a 1-year delay, it is assumed that continued and more robust testing will make it more likely that there will be a decrease in costly post-production issues such as returned claims. Increased testing costs will theoretically translate to decreased post-production error costs, and, therefore, because there is significant potential for an offset of expense to savings, no costs or benefits will be attributed to an extra year of testing. Because the October 1, 2013 compliance date is more than a year out, it is likely that few small physician practices have invested a modest amount of money and resources into the implementation of and training for ICD–10, although they may have begun planning and budgeting for the transition and may have contracts in place with vendors to purchase tools to manage the transition. While we recognize that there will be costs, we assume that these costs are negligible and that the extra time to prepare for the transition, as will be possible with a 1 year compliance date delay, will be more beneficial than costly for small providers. Therefore, we will not include small providers (under 50 physicians) in the cost analysis for providers.

There is an expectation that a 1-year delay will give small providers more time to analyze their processes, change their forms, develop their super bills, negotiate with their vendors, and, most importantly, test before production. In fact, giving small providers more time to prepare is the main justification for the 1-year delay. As with large providers, however, we will not attach any costs to these planning and testing activities since they have already been considered as costs for implementation of ICD–10 in the January 2009 ICD–10 final rule.

We use the following assumptions in calculating the costs for large providers of a 1-year delay, illustrated in Table 27:

- We use the Edifecs poll as a guide in establishing a range of costs for a delay of 1 year in implementing ICD–10 for providers. (A group of provider representatives participated in the survey.) We will use the ''HIGH'' and ''LOW'' estimate that the Edifecs poll suggests itself in its narrative: A 1 year delay will cost 10 to 30 percent of the costs that providers have spent or have budgeted for ICD–10 transition.
- We will use costs estimated by an October 2003 study by the Robert E. Nolan company commissioned by the Blue Cross and Blue Shield Association.[69] We employed this study, along with a March 2004 RAND study, in the IDC–10 proposed rule. We considered, as well, an October, 2008 analysis on the impact of ICD–10 on physician practices and clinical laboratories by Nachimson Advisors, LLC.[70] The Nachimson study, however, approached cost by examining three very specific provider environments (for instance, practices with 10 physicians) and included costs that would occur after the transition to ICD–10, such as increased documentation and claim inquiries.

In general, the Nachimson study's costs were less than the Nolan study estimates, but because it is difficult to extrapolate the Nachimson study's conclusions to a meaningful cost estimate of a 1 year delay for all large providers, we have not used that study in this RIA. We have adjusted the Nolan study cost estimates to 2012 dollars.

- The number of physician practices and their categorization by size is derived from the Modifications proposed rule.
- The costs to physician practices and hospitals would probably be incurred during the year of the proposed delay in compliance date, from October 1, 2013 to October 1, 2014. For simplicity sake, we have calculated all costs to physician practices and hospitals as occurring over one calendar year, 2014.

TABLE 27—COST TO HOSPITALS AND LARGE PHYSICIAN PRACTICES IN 2014 FOR ONE-YEAR DELAY IN THE COMPLIANCE DATE OF ICD–10 [1] [2] [3]

	Hospitals: 400 or more beds	Hospitals: 100–400 beds	Hospitals: fewer than 100 beds	Large physician practices (over 100 physicians)	Mid sized physician groups (50–100 physicians)	Total cost of ICD–10 implementation (in millions)	LOW cost for 1-Yr delay (10% of current implementation costs) (in millions)	HIGH cost of 1-Yr delay (30% of current implementation costs) (in millions)
Number of entities	521	2486	2757	393	590			
LOW Cost Per Entity (in millions)	$1.85	$0.62	$0.12	$2.46	$0.5			
HIGH Cost Per Entity (in millions)	$6.16	$1.85	$0.31	$7.39	$1.48			
Total LOW (in millions)	$963	$1,531	$339	$968	$291	$4,093	$409	$1,227
Total HIGH (in millions)	$3209	$4,594	$850	$2,905	$872.17	12,429	1,243	3,728

[1] Numbers are rounded, so totals may not reflect sum of numbers shown.
[2] Adjusted to 2012 dollars.
[3] High and low ranges from Nolan 2003, adjusted to 2012 dollars.

[69] Nolan, 2003.

[70] ''The Impact of Implementing ICD–10 on Physician Practices and Clinical Laboratories: A Report to the ICD–10 Coalition,'' October 8, 2008, Nachimson Advisors, LLC.

Similar to health plans, we assume that hospitals and large physician practices have made, and continue to make, a large investment in preparing for ICD–10 based on the expectation that there would be a return on investment from the transition to a more robust code set. A 1 year delay in the compliance date of ICD–10 will also postpone the expected time when these entities can expect to see a return on these investments. This delay in ROI will likely have negative impacts on these large providers in terms of their business plans, budgeting, and investor relations. Because of the uncertainties in predicting impacts of this sort, we have not attempted to quantify any impact resulting from a delay in ROI. We welcome industry comment or guidance on impacts of this category.

3. Cost of Delay to Students

In the ICD–10 proposed rule, we presented an estimate of training costs to implementation of ICD–10. These training costs were calculated based on an estimated number of coders working in hospitals and ambulatory clinics and multiplying that number by a specific cost to train these coders.

A delay in the implementation of ICD–10 will not substantially impact training costs because we assume that the training costs are already a part of any entity's budget and a change in compliance date will not change the amount of training that is necessary. However, one consequence of a 1 year delay to ICD–10 will be the impact to students who are now studying to become coders.

Using the experience of one university's bachelor's-level health information management program, students take the ICD coding course in the spring of their junior year. Students enrolling in Spring 2012 courses will graduate in May 2013. Anticipating the October 1, 2013 compliance date, the university started offering ICD–10 courses this spring in place of ICD–9 with the understanding that it will be preparing students for employment after graduating in 2013. If ICD–10 is delayed a year, as proposed in this rule, the 30 students in the program will have to take ICD 9 courses in addition to their ICD–10 courses in order to obtain the ICD 9 competencies to get jobs. The extra course will cost each of the 30 students approximately $2,000 (in-state tuition) or a total of $61,000.

Taking the university experience, we have projected these costs on to students in college and university coding curriculum nationwide. We have illustrated our estimates in Table 28 and calculated all costs as occurring in 2014.

Although the impact on students is small when compared to the cost for health plans, this impact illustrates some of the practical consequences of delay that will affect lives beyond the health care financial impacts.

TABLE 28—COST TO STUDENTS OF A ONE-YEAR DELAY IN THE COMPLIANCE DATE OF ICD–10 *

Cost of coding courses for 30 students	Number of institutions that provide coding courses	Cost to students/institutions to retrain in ICD–9 (in millions)
$6,000	68	$4.15

* In 2012 dollars.

Q. Summary for ICD–10

We summarize the low and high estimates of a 1-year delay in the compliance date for ICD–10 in Table 29. The total costs and cost avoidance of a proposed delay in the compliance date will likely be incurred over a 12 month period; however, due to the range in impacted entities, including educational institutions, those 12 months may span different dates and different budget periods. Further complicating the question of the timeframe in which the costs occur is the question of whether the cost should be calculated during the time it is incurred or in the budget period in which it is attributed. For instance, an educational institution may base its budget on a school year, September to August, while health plans and TPAs may base their budgets on calendar years or on varying fiscal years. Given the diversity of budgeting in the industry, there is no precise way of calculating how much of the cost and cost avoidance falls outside of the October 1, 2013 to October 1, 2014 proposed delay in compliance date. For simplicity sake, we calculate all cost avoidance and costs of a delay in the compliance date for ICD–10 as occurring in the calendar year 2014.

In Table 30, the net cost avoidance is illustrated with a—

- Low net estimate that reflects the low estimate of cost avoidance less the high estimate of costs;
- High net estimate that reflects the high estimate of cost avoidance less the low estimate of costs; and
- Medium net cost avoidance that reflects the average cost avoidance less the average cost.

TABLE 29—SUMMARY OF COST AVOIDANCE AND COSTS IN 2014 OF A 1-YEAR DELAY IN THE COMPLIANCE DATE OF ICD–10 *

	LOW (in millions)	HIGH (in millions)	MEAN (average) (in millions)
Cost Avoidance for Providers (manual submission of claims)	$1,385	$3,001	$2,193
Cost Avoidance for Providers (cost of loan interest)	1,446	3,134	2,290
Cost Avoidance for Health Plans (manual submission of claims)	804	1,742	1,273
TOTAL COST AVOIDANCE FROM A 1-YEAR DELAY IN THE COMPLIANCE DATE OF ICD–10	3,635	7,877	5,756
Cost to Commercial Health plans	530	2,698	1,614
Cost to Medicare	5	10	8
Cost to State Medicaid Agencies	83	145	114
Cost to Large Providers	409	3,728	2,069
Cost to Students	4	4	4
TOTAL COST OF A 1-YEAR DELAY IN THE COMPLIANCE DATE OF ICD–10	$1,031	$6,586	$3,808

* Calculated in 2012 dollars.

TABLE 30—COST AVOIDANCE LESS COST (NET) OF A ONE-YEAR DELAY IN THE COMPLIANCE DATE OF ICD–10

[In millions] *

Low Net Estimate (Low Cost Avoidance with High Costs) ..	−$2,950
High Net Estimate (High Cost Avoidance with Low Costs) ..	6,846
Mean Net Cost Avoidance (average)	1,948

* Calculated in 2012 dollars.

R. Regulatory Flexibility Analysis: Impact on Small Entities of a Delay in the Compliance Date of ICD–10

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) requires agencies to describe and analyze the impact of the proposed rule on small entities unless the Secretary can certify that the regulation will not have a significant impact on a substantial number of small entities. According to the Small Business Administration's size standards, a small entity is defined as follows according to health care categories: Offices of Physicians are defined as small entities if they have revenues of $10 million or less; most other health care providers (dentists, chiropractors, optometrists, mental health specialists) are small entities if they have revenues of $7 million or less; hospitals are small entities if they have revenues of $34.5 million or less. (For details, see the SBA's Web site at *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf* Refer to Sector 62—Health Care and Social Assistance).

For purposes of this analysis (pursuant to the RFA), nonprofit organizations are considered small entities; however, individuals and States are not included in the definition of a small entity. In the following discussion, we have attempted to estimate the number of small entities and provide a general discussion of the effects of this proposed rule, and where we had difficulty or were unable to find information, we solicit industry comment.

1. Number of Small Entities and Scope of Analysis

a. Health Care Providers: Physician Practices and Hospitals

As with the RIA on the delayed compliance date of ICD–10, in the category of health care providers, we analyzed physician practices and hospitals only in terms of how they will be impacted by a delay of 1 year in the compliance date of ICD–10. We did not analyze the impact to nursing and residential care facilities, dentists, or suppliers of durable medical equipment, nor did analyze the impact of implementation of ICD–10, as that analysis is provided in the RIA included in the ICD–10 proposed rule.

We narrowed our analysis to physician practices and hospitals for two reasons: (1) We have very little data on the usage of EDI among dentists, suppliers of durable medical equipment, nursing homes, and residential care facilities. The lack of data for these types of health care providers have been noted in other studies on administrative simplification; [71] and (2) we assume that the greatest costs will be borne by hospitals and physician practices as they conduct the majority of standard transactions. While we believe that some small health care provider entities outside of these two categories may be impacted, albeit in much fewer numbers, we believe the analysis gathered here would be indicative of the costs that we would expect all small health care provider entities to experience. We welcome comment from industry and the public as to our assumptions.

Because each hospital maintains its own financial records and reports separately to payment plans, we decided to report the number of establishments rather than firms. For physician practices, we assumed that the costs of a delay of the compliance date for ICD–10 would be accounted for at the level of firms rather than at the individual establishments.

According to the U.S. Census Bureau, Detailed Statistics, 2007 Economic Census, there are approximately 220,100 physician practices.. The U.S. Census Bureau data indicates that two percent of physician practices have revenues of $10 million or more, therefore approximately 4,400 physician practices are not small entities.

Nevertheless, we have decided to consider all physician practices small entities. Our basis for this is the fact that Census Bureau data is calculated from report forms that are sent to only a sample of small employers (less than 10 employees). Therefore, we can assume that the estimates from the Census Bureau are low. The estimated number of physician practices in the Modifications proposed rule (234,222 physician practices) includes physician practices with one to two physicians and is within 6 percent of the total number of physician practices estimated by the Census Bureau. Therefore, we will assume that all physician practices, as calculated by the Census Bureau (220,100), are small entities, and accept a small margin of error.

The 2007 Census Bureau reports that there are approximately 6,500 hospitals. The data indicates that 85 percent of hospitals have sales/receipts/revenues of $10 million or more. While we can assume that, of those 85 percent, some have revenues over $34.5 million; we do not have specific numbers that detail this assumption. Therefore, as with physician practices, we will make calculations on the assumption that all hospitals are small entities.

b. Health Care Clearinghouses and Transaction Vendors

We did not calculate costs and benefits to health care clearinghouses and transaction vendors in this Regulatory Flexibility Analysis because we assume that any associated costs and benefits will be passed on to the health plans or health care providers, and will be included in the costs and benefits we apply to health plans and health care providers.

c. Health Plans

The health insurance industry was examined in depth in the Regulatory Impact Analysis prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). It was determined, in that analysis, that there were few if any ''insurance firms,'' including HMOs that fell below the size thresholds for ''small'' business established by the SBA Health. We assume that the ''insurance firms'' are synonymous, for the most part, with health plans who conduct standard transactions with other covered entities and are, therefore, the entities that will have costs associated with a delay of the compliance date for ICD–10. In fact, then, and even more so now, the market for health insurance is dominated by a relative handful of firms with substantial market shares.

There are, however, a number of health maintenance organizations (HMOs) that are small entities by virtue of their nonprofit status even though few if any of them are small by SBA size standards. There are approximately 100 such HMOs. These HMOs and those Blue Cross and Blue Shield plans that are non-profit organizations, like the other firms affected by this proposed rule, will be required to delay their implementation of ICD–10. Accordingly, this proposed rule will affect a ''substantial number'' of small entities,

[71] ''Excess Billing and Insurance-Related Administrative Costs,'' by James Kahn, in *The Healthcare Imperative; Lowering Costs and Improving Outcomes: Workshop Series Summary,* edited by Pierre L. Yong, Robert S. Saunders, and Leigh Anne Olsen.

and we include the impact of a delay in the compliance date of ICD–10 for the 100 HMOs and Blue Cross and Blue Shield plans in this RFA.

We welcome industry and stakeholder input on our assumption in this regard.

2. Cost for Providers

We have applied the same methodology and assumptions as we applied in the RIA to arrive at estimates to impacts to small entities. For providers, as we stated previously in the RIA, there is a distinction between the costs and benefits for large providers, hospitals and large physician practices, and smaller physician practices. In general, our assumption is that the delay in the compliance date of ICD–10 will be more costly for large providers because many of them have already made substantial investments. The cost of implementing ICD–10, for all entities that have already invested funds and resources to that endeavor, will increase by a factor of 10 to 30 percent of the current cost.

On the other hand, the justification for a delay in the compliance date of ICD–10 rests on the assumption that the delay will give many small providers more time to prepare for the transition. Therefore, our assumption is that there will be little to no cost for most small providers and that the cost avoidance of a delay will be high.

Table 31 illustrates the estimated costs and benefits for providers according to their size. All costs and benefits are calculated as occurring in 2014. It is important to note that these are very general estimates, and reflect our assumption for these provider groups at large. Due to the high variability in provider settings and systems, these estimates are not meant to reflect costs for specific providers. We welcome comments on our assumptions.

TABLE 31—COSTS AND BENEFITS IN 2014 OF A DELAY IN THE COMPLIANCE DATE OF ICD–10 FOR PROVIDERS

[Small Entities]*

	Physician practices with less than 50 physicians	Physician practices with 50 to 100 physicians	Physician practices with more than 100 physicians	Hospitals with less than 100 beds	Hospitals with 100 to 400 beds	Hospitals with more than 400 beds	Totals
Number of Entities	233,239	590	393	2,757	2,486	521	239,986
LOW Costs (in millions)	$.00	$29.07	$97	$34	$153	$96	$409
HIGH Costs (in millions)	$.00	$261.65	$871	$255	$1,378	$963	$3,728
LOW Cost Avoidance (in millions)	$1,446	$.00	$.00	$.00	$.00	.00	$1,446
HIGH Cost Avoidance (in millions)	$3,134	$.00	$.00	$.00	$.00	.00	$3,134

*Both cost and cost avoidance occur in 2014. In 2012 dollars.

3. Cost to Nonprofit Health Plans

As noted, there are a number of health maintenance organizations (HMOs) that are small entities by virtue of their nonprofit status even though few if any of them are small by SBA size standards. There are approximately one hundred such HMOs and 38 Blue Cross and Blue Shield plans that are non-profit organizations. We have applied the same methodology and assumptions as we applied in the RIA to arrive at estimates to impacts to these non-profit health plans. We have estimated that all of the Blue Cross and Blue Shield plans are large health plans, and all of the HMOs are small health plans.

Table 31 illustrates the costs and benefits for nonprofit health plans. We calculated the costs per health plan from the low and high range estimates used in the RIA for large health plans (for Blue Cross and Blue Shield plans), and small health plans (for non-profit HMOs). We calculated the cost avoidance by assuming that large health plans would return 10 percent of the total health care claims—and small health plans would return 5 percent of the total health care claims—if the compliance date of ICD–10 continued to be October 1, 2013. This assumption is based on the fact that 25 national and regional health insurers account for nearly two-thirds of the total market, and that this proportion accounts can be applied to total claims; for example that smaller health insurers process one-third of the claims. All costs and cost avoidance are calculated as occurring in 2014.

TABLE 32—COSTS AND COST AVOIDANCE IN 2014 FOR NON–PROFIT HEALTH PLANS FOR A 1–YEAR DELAY OF THE COMPLIANCE DATE FOR ICD–10*

	Number of non profit health plans	LOW COST per health plan in millions	HIGH COST per health plan in millions	LOW COST AVOIDANCE in millions	HIGH COST AVOIDANCE in millions
Blue Cross Blue Shield	38	$1.44	$7.26	$88.26	$122.21
HMO	100	.12	.60	4.02	5.57
Total	.00	1.56	7.86	92.28	127.77

*Both cost and cost avoidance occur in 2014. In 2012 dollars.

Tables 31 and 32 both illustrate that a 1-year delay in the compliance date of ICD–10 will be more beneficial to small and nonprofit entities than it will be burdensome. Nevertheless, we are specifically requesting comments on our analysis.

S. Summary and Accounting Statement for HPID, NPI and ICD–10

Table 33 summarizes the impacts of this proposed rule, including the costs and benefits of implementation of the

HPID and the costs and cost avoidance of a one-year delay in the compliance date of ICD–10. The costs and benefits of implementation of the HPID are calculated over a ten year period, while the cost avoidance and costs of the delay of the compliance date of ICD–10 will all occur in 2014.

TABLE 33—SUMMARY OF COSTS AND SAVINGS/COST AVOIDANCE, OF IMPLEMENTATION OF HPID, NPI AND A ONE-YEAR DELAY IN THE COMPLIANCE DATE OF ICD–10*

	LOW	HIGH	MEAN
Total Savings/Cost Avoidance	$6,532	$13,612	$10,072
Total Costs	2,133	8,784	5,459

*Costs and savings of HPID are calculated over 11 years, 2014 through 2024. Costs and cost avoidance of a delay in the compliance date of ICD–10 are calculated over 1 year, 2014.

In Table 34, the LOW estimate Net Savings/Cost Avoidance is calculated using the LOW Savings/Cost Avoidance minus the HIGH estimated Costs; that is, the worst case scenario in terms of low benefits and high costs. The HIGH estimate Net Savings/Cost Avoidance is estimated using the HIGH Savings/Cost Avoidance minus the LOW estimated Costs; that is the best case scenario in terms of high benefits and low costs. The MEAN Net Savings/Cost Avoidance is the average of the best case scenario and the worst case scenario.

TABLE 34—SUMMARY OF NET COST AVOIDANCE/SAVINGS OF IMPLEMENTATION OF HPID, NPI AND A ONE-YEAR DELAY IN THE COMPLIANCE DATE OF ICD–10

	LOW cost avoidance/ savings less HIGH Costs (in millions)	HIGH cost avoidance/ savings less LOW costs (in millions)	MEAN (in millions)
Net Savings/Cost Avoidance	−$2,252	$11,478	$4,613

As required by OMB Circular A–4,[72] Tables 35, 36 and 37 are accounting statements showing the classification of the expenditures associated with the provisions of this proposed rule. Table 35 provides our best estimate of the costs and benefits associated with the implementation and use of the HPID. Table 36 provides our best estimates of the costs and benefits associated with a 1-year delay in the compliance date of ICD–10 proposed herein. Table 37 provides a combined estimate of the costs and benefits associated with implementation and use of HPID and a 1-year delay in the compliance date of ICD–10.

TABLE 35—ACCOUNTING STATEMENT FOR HPID IMPLEMENTATION: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2013 TO FY 2023

[In millions of dollars]

Category	Primary estimate (millions)	Minimum estimate (millions)	Maximum estimate (millions)	Source citation (RIA, preamble, etc.)
BENEFITS:				
Annualized Monetized benefits:				
7% Discount	$376	$252	$532	RIA.
3% Discount	367	258	527	RIA.
Qualitative (un-quantified) benefits.	HPID: Environmental (electronic over paper), patient benefits (more staff time), benefits from a decrease in time interacting with health plans for hospitals, dentists, suppliers of durable medical equipment, nursing homes, and residential care facilities, and providers other than physician practices.			
COSTS:				
Annualized Monetized costs:				
7% Discount	$203	$135	$270	RIA and Collection of Information.
3% Discount	172	115	229	RIA and Collection of Information.

[72] ''Circular A–4,'' September 17, 2003, Office of Management and Budget (OMB), *http://www.whitehouse.gov/omb/circulars_a004_a-4/*

TABLE 35—ACCOUNTING STATEMENT FOR HPID IMPLEMENTATION: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2013 TO FY 2023—Continued

[In millions of dollars]

Category	Primary estimate (millions)	Minimum estimate (millions)	Maximum estimate (millions)	Source citation (RIA, preamble, etc.)
Qualitative (unquantified) costs.	HPID: Cost for system changes for dentists, suppliers of durable medical equipment, nursing homes, residential care facilities, and providers other than physician practices and hospitals.	None	None.	
TRANSFERS:				
Annualized monetized transfers: ''on budget''.	N/A	N/A	N/A.	
From whom to whom?	N/A	N/A	N/A.	
Annualized monetized transfers: ''off-budget''.	N/A	N/A	N/A.	

TABLE 36—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FOR ONE-YEAR DELAY OF ICD–10 COMPLIANCE DATE FROM FY 2013 TO FY 2023

[In millions of dollars]

Category	Primary estimate (millions)	Minimum estimate (millions)	Maximum estimate (millions)	Source citation (RIA, preamble, etc.)
BENEFITS:				
Annualized Monetized benefits:				
7% Discount	$717	$453	$982	RIA.
3% Discount	604	381	827	RIA.
Qualitative (un-quantified) benefits.	Avoidance of returned health care claims.			
COSTS:				
Annualized Monetized costs:				
7% Discount	$475	$128	$821	RIA and Collection of Information.
3% Discount	400	108	691	RIA and Collection of Information.
Qualitative (unquantified) costs.	Downstream costs of a delayed return on investment for covered entities..	None	None.	
TRANSFERS:				
Annualized monetized transfers: ''on budget''.	N/A	N/A	N/A.	
From whom to whom?.	N/A	N/A	N/A.	
Annualized monetized transfers: ''off-budget''.	N/A	N/A	N/A.	

TABLE 37—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FOR HPID IMPLEMENTATION AND ONE-YEAR DELAY OF ICD–10 COMPLIANCE DATE, FROM FY 2013 TO FY 2023

[In millions of dollars]

Category	Primary estimate (millions)	Minimum estimate (millions)	Maximum estimate (millions)	Source citation (RIA, preamble, etc.)
BENEFITS:				
Annualized Monetized benefits:				
7% Discount	$1,069	$705	$1,479	RIA.
3% Discount	$960	$640	$1,338	RIA.

TABLE 37—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FOR HPID IMPLEMENTATION AND ONE-YEAR DELAY OF ICD–10 COMPLIANCE DATE, FROM FY 2013 TO FY 2023—Continued

[In millions of dollars]

Category	Primary estimate (millions)	Minimum estimate (millions)	Maximum estimate (millions)	Source citation (RIA, preamble, etc.)
Qualitative (unquantified) benefits.	HPID: Environmental (electronic over paper), patient benefits (more staff time), benefits from a decrease in time interacting with health plans for hospitals, dentists, suppliers of durable medical equipment, nursing homes, and residential care facilities, and providers other than physician practices. Delay in Compliance Date for ICD–10: Avoidance of returned health care claims.			
COSTS:				
Annualized Monetized costs:				
7% Discount	$677	$264	$1,091	RIA and Collection of Information.
3% Discount	$572	$223	$920	RIA and Collection of Information.
Qualitative (unquantified) costs.	HPID: Cost for system changes for dentists, suppliers of durable medical equipment, nursing homes, residential care facilities, and providers other than physician practices and hospitals.			
	DELAY IN COMPLIANCE DATE OF ICD–10: Downstream costs of a delayed return on investment for covered entities.	None	None	
TRANSFERS:				
Annualized monetized transfers: ''on budget''.	N/A	N/A	N/A	
From whom to whom?	N/A	N/A	N/A	
Annualized monetized transfers: ''off-budget''.	N/A	N/A	N/A	

List of Subjects in 45 CFR Part 162

Administrative practice and procedures, Electronic transactions, Health facilities, Health insurance, Hospitals, Incorporation by reference, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in this preamble, the Department of Health and Human Services proposes to amend 45 CFR part 162 to read as follows:

PART 162—ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 162 continues to read as follows:

Authority: Secs. 1171 through 1180 of the Social Security Act (42 U.S.C. 1320d–1320d–9), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, sec. 105 of Pub. L. 110–233, 122 Stat. 881–922, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)), and secs. 1104 and 10109 of Pub. L. 111–148, 124 Stat. 146–154 and 915–917.

Subpart A—General Provisions

2. Section 162.103 is amended by adding the definitions of ''Controlling health plan (CHP),'' ''Covered health care provider,'' and ''Subhealth plan (SHP)'' in alphabetical order to read as follows:

§ 162.103 Definitions.

* * * * *

Controlling health plan (CHP) means a health plan that—

(1) Controls its own business activities, actions, or policies; or

(2)(i) Is controlled by an entity that is not a health plan; and

(ii) If it has a subhealth plan(s) (as defined in this section), exercises sufficient control over the subhealth plan(s) to direct its/their business activities, actions, or policies.

Covered health care provider means a health care provider that meets the definition at paragraph (3) of the definition of ''covered entity'' at § 160.103.

* * * * *

Subhealth plan (SHP) means a health plan whose business activities, actions, or policies are directed by a controlling health plan.

Subpart D—Standard Unique Health Identifier for Health Care Providers

§ 162.402 [Removed and Reserved]

3. Section 162.402 is removed and reserved.

4. Section 162.404 is amended as follows:

A. Redesignating paragraph (a) as paragraph (a)(1).

B. Adding a paragraph (a)(2).

The addition reads as follows:

§ 162.404 Compliance dates of the implementation of the standard unique health identifier for health care providers.

(a) * * *

(2) An organization covered health care provider must comply with the implementation specifications in § 162.410(b) by [Date 180 days after the effective date of the final rule].

* * * * *

5. Section 162.410 is amended as follows:

A. Redesignating paragraph (b) as paragraph (c).

B. Adding a new paragraph (b).

The addition reads as follows:

§ 162.410 Implementation specifications: Health care providers.

* * * * *

(b) An organization covered health care provider that has as a member, employs, or contracts with, an individual health care provider who is not a covered entity and is a prescriber, must require such health care provider to—

(1) Obtain an NPI from the National Plan and Provider Enumeration System (NPPES); and

(2) To the extent the prescriber writes a prescription while acting within the scope of the prescriber's relationship with the organization, disclose the NPI upon request to any entity that needs it to identify the prescriber in a standard transaction.

* * * * *

6. Subpart E is added to part 162 to read as follows:

Subpart E—Standard Unique Health Identifier for Health Plans

Sec.

Subpart E—Standard Unique Health Identifier for Health Plans

§ 162.502 [Reserved]

§ 162.504 Compliance dates for the implementation of the standard unique health plan identifier.

(a) *Covered health care providers.* A covered health care provider must comply with the implementation specifications in § 162.510 no later than October 1, 2014.

(b) *Health plans.* A health plan must comply with the implementation specifications in § 162.510 and § 162.512 no later than one of the following dates:

(1) A health plan that is not a small health plan—October 1, 2014.

(2) A health plan that is a small health plan—October 1, 2015.

(c) *Health care clearinghouses.* A health care clearinghouse must comply with the implementation specifications in § 162.510 no later than October 1, 2014.

§ 162.506 Standard unique health plan identifier.

(a) *Standard.* The standard unique health plan identifier is the Health Plan Identifier (HPID) that is assigned by the Enumeration System identified in § 162.508.

(b) *Required and permitted uses for the HPID.* (1) The HPID must be used as specified in § 162.510 and § 162.512.

(2) The HPID may be used for any other lawful purpose.

§ 162.508 Enumeration System.

The Enumeration System shall do all of the following:

(a) Assign a single, unique—

(1) HPID to a health plan, provided that the Secretary has sufficient information to permit the assignment to be made; or

(2) OEID to an entity eligible to receive one under § 162.514(a), provided that the Secretary has sufficient information to permit the assignment to be made.

(b) Collect and maintain information about each health plan that applies for or has been assigned an HPID and each entity that applies for or has been assigned an OEID, and perform tasks necessary to update that information.

(c) If appropriate, deactivate an HPID upon receipt of sufficient information concerning circumstances justifying deactivation.

(d) If appropriate, reactivate a deactivated HPID or OEID upon receipt of sufficient information justifying reactivation.

(e) Not assign a deactivated HPID to any other health plan or OEID to any other entity.

(f) Disseminate Enumeration System information upon approved requests.

§ 162.510 Implementation specifications: Covered entities.

(a) A covered entity must use an HPID to identify a health plan where a covered entity identifies a health plan in a transaction for which the Secretary has adopted a standard under this part.

(b) If a covered entity uses one or more business associates to conduct standard transactions on its behalf, it must require its business associate(s) to use an HPID to identify a health plan where the business associate(s) identifies a health plan in a transaction for which the Secretary has adopted a standard under this part.

§ 162.512 Implementation specifications: Health plans.

(a) A controlling health plan must do all of the following:

(1) Obtain an HPID from the Enumeration System for itself.

(2) Disclose its HPID, when requested, to any entity that needs the HPID to identify the health plan in a standard transaction.

(3) Communicate to the Enumeration System any changes in its required data elements in the Enumeration System within 30 days of the change.

(b) A controlling health plan may do the following:

(1) Obtain an HPID from the Enumeration System for a subhealth plan of the controlling health plan.

(2) Direct a subhealth plan of the controlling health plan to obtain an HPID from the Enumeration System.

(c) A subhealth plan may obtain an HPID from the Enumeration System.

(d) A subhealth plan that is assigned an HPID from the Enumeration System must comply with the requirements that apply to a controlling health plan in paragraphs (a)(2) through (a)(3) of this section.

§ 162.514 Other entity identifier.

(a) An entity may obtain an Other Entity Identifier (OEID) to identify itself if the entity meets all of the following:

(1) Needs to be identified in a transaction for which the Secretary has adopted a standard under this part;

(2) Is not eligible to obtain an HPID;

(3) Is not eligible to obtain an NPI; and

(4) Is not an individual.

(b) An OEID must be obtained from the Enumeration System identified in § 162.508.

(c) *Uses for the OEID.* (1) An other entity may use the OEID it obtained from the Enumeration System to identify itself or have itself identified on all covered transactions in which it needs to be identified.

(2) The OEID may be used for any other lawful purpose.

Subpart J—Code Sets

7. Section 162.1002 is amended by revising paragraph (b) introductory text and paragraph (c) introductory text to read as follows:

§ 162.1002 Medical data code sets.

* * * * *

(b) For the period on and after October 16, 2003 through September 30, 2014:

* * * * *

(c) For the period on and after October 1, 2014:

* * * * *

Dated: February 2, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: April 5, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–8718 Filed 4–9–12; 11:15 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Revised Critical Habitat for *Allium munzii* (Munz's onion) and *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2012–0008; 4500030114]

RIN 1018–AX42

Endangered and Threatened Wildlife and Plants; Designation of Revised Critical Habitat for Allium munzii (Munz's onion) and Atriplex coronata var. notatior (San Jacinto Valley crownscale)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise critical habitat for *Allium munzii* (Munz's onion) and for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 889 acres (360 hectares) are being proposed for designation as critical habitat for *A. munzii* and approximately 8,020 acres (3,246 hectares) for *A. c.* var. *notatior.* All of the proposed revised critical habitat is located in Riverside County, California.

DATES: We will accept comments received or postmarked on or before June 18, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by June 1, 2012.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter Docket No. FWS–R8–2012–0008, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–2012–0008; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a proposed rule to revise the designations of critical habitat for two endangered plant taxa, Munz's onion (*Allium munzii*) and San Jacinto Valley crownscale (*Atriplex coronata* var. *notatior*). Under the Endangered Species Act, any species that is determined to be threatened or endangered shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Designations and revisions of critical habitat can only be completed by issuing a rule.

Critical habitat was designated for Munz's onion and San Jacinto Valley crownscale in 2005. We agreed to reconsider the critical habitat designations in a settlement agreement in response to a complaint filed in court, and are submitting a proposed revised critical habitat designation for both plants.

We are proposing changes to the designation of critical habitat for Munz's onion and San Jacinto Valley crownscale.

- Our previous final critical habitat designation for Munz's onion in 2005 identified 176 acres (71 hectares) of U.S. Forest Service lands as critical habitat after excluding 1,068 acres (432 hectares) based upon Endangered Species Act exclusions. This proposed revised designation for Munz's onion includes five units in Riverside County, California, totaling 889 acres (360 hectares). We are considering excluding 790 acres (320 hectares) of lands from designation based on partnerships created with the establishment of permitted Habitat Conservation Plans or other Management Plans.
- No critical habitat was designated in the previous 2005 final designation for San Jacinto Valley crownscale after 15,232 acres (6,164 hectares) were excluded. This proposed revised designation for San Jacinto Valley crownscale includes three units in Riverside County, California, totaling 8,020 acres (3,246 hectares). We are considering excluding all 8,020 acres (3,246 hectares) of lands from critical habitat designation based on partnerships created with the establishment of a permitted Habitat Conservation Plan.

The basis for our action. Under the Endangered Species Act, any species that is determined to be threatened or endangered shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Section 4(b)(2) of the Endangered Species Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

We are preparing an economic analysis of the proposed revised designations of critical habitat. In order to consider economic impacts, we are preparing a new analysis of the economic impacts of the proposed revised critical habitat designations and related factors. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek additional public review and comment.

We will seek peer review. We are seeking the expert opinions of appropriate and independent specialists regarding this proposed rule to ensure that our critical habitat designations are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during the proposed rule's public comment period on our specific assumptions and conclusions in this proposed rule to revise the designations of critical habitat. We will consider all comments and information received during the comment period in our preparation of the final determinations. Accordingly, the final decisions may differ from this proposal.

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other

interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the taxon (a group of individuals recognized as a formal unit at any taxonomic rank (for example, a family, genus, species, subspecies, or variety; *Allium munzii* is a species, *Atriplex coronata* var. *notatior* is a variety) from human activity, which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of *Allium munzii* and *Atriplex coronata* var. *notatior* habitat,

(b) Which areas within the geographical area occupied at the time of listing contain the physical or biological features essential to the conservation of the taxa and should be included in the designation and why,

(c) Special management considerations or protection of essential physical or biological features that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change, and

(d) Which areas outside the geographical area occupied at the time of listing are essential for the conservation of the taxa and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on *Allium munzii* and *Atriplex coronata* var. *notatior* and proposed critical habitat.

(5) Comments or information that may assist us in identifying or clarifying the primary constituent elements (PCEs) for the two taxa.

(6) How the proposed revised critical habitat boundaries could be refined to more accurately circumscribe the areas meeting the definition of critical habitat.

(7) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities, families, or tribes, and the benefits of including or excluding areas that exhibit these impacts.

(8) Which specific lands covered by the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) or other permitted HCPs and proposed for designation as critical habitat should be considered for exclusion under section 4(b)(2) of the Act and for those specific areas, how benefits of exclusion from the critical habitat designation would outweigh the benefits of inclusion in the designation. We are currently considering to exclude, under section 4(b)(2) of the Act, all lands covered by the Western Riverside County MSHCP or other permitted HCPs and Cooperative Agreements described in this proposed rule (see Exclusions Based on Other Relevant Impacts section below).

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *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

This is a proposed rule to revise the designations of critical habitat for two plant taxa, *Allium munzii* and *Atriplex coronata* var. *notatior.* The document is structured to address the taxa separately under each of the sectional headings that follow.

Allium munzii

It is our intent to discuss only those topics directly relevant to the proposed revised designation of critical habitat for *Allium munzii* in this section of this proposed rule. For more information on *A. munzii,* please refer to the proposed listing rule published in the **Federal Register** on December 15, 1994 (59 FR 64812), and the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975). Additional information on the biology of the species may be found in the first rule proposing critical habitat published in the **Federal Register** on June 4, 2004 (69 FR 31569), the subsequent final critical habitat rule published in the **Federal Register** on June 7, 2005 (70 FR 33015), and the 5-year review for *A. munzii* signed on June 17, 2009. These documents are available on our Web site at *http://www.fws.gov/carlsbad/*or *http://www.fws.gov/endangered/*under *Allium munzii* or Munz's onion.

When we listed *Allium munzii* as endangered in 1998, the genus *Allium* was included in the large broadly defined family Liliaceae (lily family). The genus *Allium* is now segregated in the family Alliaceae (onion family), and is recognized as such in the recent revision of the *Jepson Manual of Vascular Plants of California* (McNeal 2012, pp. 1289–1292). Upon review of available systematic and floristic literature and consultation with species experts, we are amending part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations to reflect the transfer of *Allium,* including *A. munzii,* from Liliaceae to Alliaceae. This transfer does not alter the description, distribution, or listing status of *A. munzii.*

Description

Allium munzii belongs to the *A. fimbriatum* complex, a group of seven species found primarily in California (McNeal 1992, p. 413). *Allium munzii* is a bulb-forming perennial herb that annually produces a single cylindrical leaf prior to flowering and, depending on rainfall and age of the plant, a scapose inflorescence (a leafless flower stalk that grows directly from the ground) 0.5 to 1.2 feet (ft) (15 to 35 centimeters (cm)) tall. The inflorescence is umbellate (each individual flower stalk radiates from the same point of attachment), and consists of 10 to 35 flowers. Each flower has six white or white with red midvein perianth segments (outer part of flower), 0.2 to 0.3 inch (in) (6 to 8 millimeters (mm)) long, which become red with age. The ovary is crested with fine, irregularly dentate processes and the fruit is a three-lobed capsule (McNeal 1992, p. 413).

Biology and Life History

Native *Allium* taxa typically require 3 to 5 years after seeds germinate for plants to reach maturity and produce flowers (Schmidt 1980, p. 164). *Allium* plants are adapted to survive

unfavorable seasons underground, as are all bulb-forming and corm-forming plants (geophytes) (Pütz 1992, p. 1433). Seedlings achieve the appropriate depth in the soil by the action of specialized roots that pull the young plants down through the soil (Pütz 1992, p. 1433). *Allium munzii* plants are dormant from mid-summer through autumn. The flowering period varies from year to year, but is generally between March and May (California Native Plant Society (CNPS) 2001, p. 67). After flowering and seed dispersal, the aboveground portions of *A. munzii* plants die back to the bulb. Following seed germination, at least 3 years are required for these bulb-forming plants to produce flowers (Wall 2012, pers. comm.).

Allium munzii is adapted to seasonal (summer and fall) drought and variable annual rainfall. McNeal (1992, p. 413) observed that flowering in the *A. fimbriatum* complex appears to be correlated with rains in the late fall and early winter. As a result, *A. munzii* may occur in various states during a given growing season, including: (1) As dormant underground bulbs, (2) as seedlings and other pre-reproductive plants that only produce one leaf, (3) as adults with only one leaf that do not produce an inflorescence that year, (4) as adults that produce one leaf and an inflorescence, and (5) as seeds in a soil seedbank. When rainfall is heavier, most plants flower successfully (McNeal 1992, p. 413); *A. munzii* often does not flower in very dry years (Boyd 1988, p. 3), though most plants will sprout leaves and sometimes produce flower buds. In addition to sexual reproduction through seed production, *A. munzii* plants can reproduce asexually through vegetative division of the bulbs (Ellstrand 1993, p. 5; Ellstrand 1999, p. 1). We have no definitive information regarding pollinators of *A. munzii,* but it is likely that a number of insect species serve this function (Boyd 2007, pers. comm.). Small beetles of the family Anthicidae (ant-like flower beetles) were found on about one-third of the *A. munzii* inflorescences of a population in Temescal Canyon (The Environmental Trust 2002, p. 16); however, their role as pollinators was not confirmed.

Habitat and Soil Preferences

Allium munzii is a narrow endemic plant discontinuously distributed along the southern edge of the greater Riverside-Perris area (Perris Basin) in western Riverside County, between the elevations of 1,200 to 2,700 ft (366 to 823 meters (m)) above mean sea level (AMSL), from Temescal Canyon southeast to the foothills of the San Jacinto Mountains (Boyd 1988, p. 2; Roberts *et al.* 2004, pp. 10, 130). Climate in this area is characterized by cool, moist winters and hot, dry summers (Boyd 1988, p. 4). *Allium munzii* is found on level or slightly sloping areas or on terrace escarpments (California Natural Diversity Database (CNDDB) 2011a) and is strongly associated with mesic (wet) clay soils in western Riverside County (Boyd 1988, pp. 2, 4). *Allium munzii* occupy microhabitat sites created by the complex geology of the Perris Basin; these sites receive or retain more moisture than nearby or surrounding sites due to exposure, slope characteristics, hydrological characteristics, or topographic features (see, for example, the topography and geology discussion in Boyd (1983, pp. 10, 13–14, 18)).

Many of the clay soil types where *Allium munzii* occurs typically support open native or nonnative grasslands. Specific designations include southern needlegrass grassland, mixed grassland, open coastal sage scrub or Riversidean sage scrub, or occasionally cismontane juniper woodlands (CNPS 2001, p. 67). The species is also considered a component of a ''clay soil flora'' that includes perennial herbs and a variety of annuals (Boyd 1988, p. 4). Plants are most frequently found in areas that are minimally disturbed and in areas where there is little competition and overcrowding from nonnative plants. In contrast, areas that consistently experience ground disturbance activities (such as disking for dryland farming) or are heavily infested with invasive, nonnative plants (particularly annual grasses) generally result in a decline in habitat quality and therefore declining *A. munzii* populations (Roberts 1998, pers. comm.; CNDDB 2011a).

Known soil associations with *Allium munzii* include, but are not limited to: Altamont, Auld, Bosanko, and Porterville clays of sedimentary origin. These clay soils are scattered in a band several miles wide and extend south of Corona, California, through Temescal Canyon and along the Elsinore Fault zone to the southwestern foothills of the San Jacinto Mountains (Boyd 1988, p. 2). Some of these soils are small pockets of clay soil (for example Gavilan Hills) and are not identified on coarse-scale soil maps (Boyd 2011a, pers. comm.). Wet clay soils facilitate the formation of soil channels for movement of young bulbs (Pütz 1992, p. 1433), which is necessary for establishment and persistence of *A. munzii* plants. *Allium munzii* is also found in rocky-sandy loam soil within rocky outcrops (such as North Domenigoni Hills) (CNDDB 2011a, Element Occurrence (EO) 10). These soils may be of sedimentary or igneous origin with a clay subsoil (such as Cajalco, Las Posas, or Vallecitos) (Knecht 1971, pp. 2–3, 21, 42, 62–64).

Spatial Distribution, Historical Range, and Population Size

As noted above, *Allium munzii* is a narrow endemic species with a naturally discontinuous distribution in western Riverside County (Boyd 1988, p. 2; Roberts *et al.* 2004, pp. 10, 130). Its historical distribution may have been within clay soils scattered throughout the entire Perris basin in western Riverside County, which exhibits a complex physical geography characterized by several distinct geologic events and subsequent erosional processes that have produced numerous soil or sediment types on the remaining land forms (Dudley 1936, pp. 358–360, 376). *Allium munzii* shares its range and habitat with a portion of the range of the similar-appearing *A. haematochiton* (red-skinned onion). The two species can occur within several feet of each other, but they do not interbreed (CDFG 1989, p. 2).

In general, the distribution of plant taxa may be determined from a variety of sources including preserved herbarium specimens, survey reports, and various databases. Survey records typically contain information describing locations and numbers of plants, which can be called localities or groups of individual plants (up to several thousand in one location or only a few plants), or can be described as the actual number of individual plants. The precision of the location of survey sites varies from general area descriptions to road perimeters to more recent Global Positioning System (GPS) technology. The CNDDB, maintained by the California Department of Fish and Game (CDFG), is an ongoing effort to include herbarium records and survey reports for separate Element Occurrences (EOs) of all of the taxa tracked by the database. To constitute a separate EO, the site must be at least one-quarter mile from any other such site. Sequential surveys are accumulated in the EO report for the site. Because contribution to the database is not mandatory, some herbarium specimens and survey reports are not yet included in the database. In this proposed rule, our use of the term occurrence, often in relation to a critical habitat unit, may indicate an area that includes one or more point localities and EOs.

Although 6 of the 18 CNDDB-defined EOs have been detected since listing, the species' geographic range (greater Perris Basin) has remained essentially

the same since listing. We identified 13 populations of *Allium munzii* in our listing rule (63 FR 54975; October 13, 1998) that were primarily based on sites identified as CNDDB EOs and cited in the rule (EOs 2, 3, 5, 7–16). Since then, six new EOs have been included in the CNDDB database (CNDDB 2011a, EOs 17, 18, 20, 21, 22, and 23), and during our 2009 5-year review, we located another record (1994) that was unknown at the time of listing and that is not yet described in the CNDDB database (Service 2009, p. 38; proposed EO 24). At the time of our 2009 5-year review, we assessed the status of six EOs as follows: two CNDDB-defined EOs (EOs 1 and 8) are likely extirpated (locally extinct), three (EOs 20, 21, and 22) are vague locations or historical and of currently unknown condition, and one (EO 19) was likely based on a misidentified specimen and deleted by CNDDB (Service 2009, p. 9). In addition, the CNDDB has now combined EO 8 with EO 3 (CNDDB 2011a, EO3). We therefore concluded in our 5-year review that there were 18 extant (still in existence) EOs (EOs 2–7, 9–18, 23, and proposed EO 24) for *A. munzii,* all essentially within the same geographic range known at the time of listing. Because of the species' habitat requirements, we do not anticipate this geographic range will change significantly in the future, even if additional locations of plants are discovered.

The number of individual plants of *Allium munzii* detected in any one area differs from year to year and is not an accurate reflection of the actual number of individuals present. This is primarily due to the variety of life-history phases represented in a given area (see description in the Biology and Life History section above). Some surveyors may only sample flowering individuals while others may be able to sample plants with only the vegetative single leaf present. Because of the difficulties of obtaining reliable survey results and the fact that the number of standing individuals is dependent upon adequate rainfall, any estimation of individuals at a given location may vary by several orders of magnitude in any given year.

In the 1998 final listing rule we estimated that there were 20,000 to 70,000 individuals of *Allium munzii* (63 FR 54975; October 13, 1998). The largest recorded location of plants was at Harford Springs County Park and adjacent private lands (EO 2), with over 50,000 individuals observed in 1995 (Ellstrand 1996, p. 4). In our 5-year review, we found that, prior to listing, 10 CNDDB-defined EOs have supported 1,000 or more individuals in at least one year (Service 2009, Appendix 1, p. 33), while others support fewer individual plants (i.e., 500 or fewer plants).

Atriplex coronata var. notatior

It is our intent to discuss only those topics directly relevant to the proposed revised designation of critical habitat for *Atriplex coronata* var. *notatior* in this section of this proposed rule. For more information on *A. c.* var. *notatior,* please refer to the proposed listing rule published in the **Federal Register** on December 15, 1994 (59 FR 64812) and the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975). Additional information on the biology of this taxon may be found in the rule proposing critical habitat published in the **Federal Register** on October 6, 2004 (69 FR 59844), the subsequent final critical habitat designation published in the **Federal Register** on October 13, 2005 (70 FR 59952), and the 5-year review for *A. coronata* var. *notatior* signed on March 31, 2008. These documents are available on our Web site at *http://www.fws.gov/carlsbad/* or *http://www.fws.gov/endangered/* under *Atriplex coronata* var. *notatior* or San Jacinto Valley crownscale.

Description

Atriplex coronata var. *notatior* is a bushy, erect, annual plant that has unisexual flowers on each plant. It is a member of the Chenopodiaceae (goosefoot family) (Munz 1974, p. 351). Plants are from 4 to 12 in (10 to 30.5 cm) high and generally appear gray and scaly during the growing season, becoming glabrous and straw-colored as they mature (Taylor and Wilken 1993, p. 501). The grayish leaves are sessile (stalkless and attached directly at the base), alternate, 0.3 to 0.8 in (8 to 20 mm) long, and elliptic to ovate-triangular in outline. The flowers occur in mixed clusters (Munz 1974, p. 353; Taylor and Wilken 1993, p. 501). The female flowers are obscure and develop spherical bracts in the fruiting phase. These bracts have dense tubercles (projections) that are roughly equal in number to the marginal teeth on the bracts (Munz 1974, p. 353; Taylor and Wilken 1993, p. 501). *Atriplex coronata* var. *notatior* can be distinguished from the more northern *A. c.* var. *coronata* by its erect stature, the spherical shape of the bracts together in fruiting stage, and the more numerous tubercles and marginal teeth on the bracts. The ranges of the two taxa do not overlap. *Atriplex coronata* var. *notatior* may co-occur with one or more of six native and one introduced *Atriplex* taxa within its range (Bramlet 1993b, p. 7–8) and can be distinguished from these taxa by a combination of characteristics, including life history, shape of the leaf, and size and form of the bract (Munz 1974, pp. 354–355; Taylor and Wilken 1993, p. 501).

Biology and Life History

The persistence of *Atriplex coronata* var. *notatior* depends upon a hydrologic regime that includes seasonal and sporadic ponding or flooding in combination with slow drainage in alkaline soils and habitats. The duration and extent of ponding or flooding can be extremely variable from one year to the next depending on rainfall and local runoff conditions. Seasonal flooding is a necessary environmental process for *A. c.* var. *notatior* because it precludes invasion from upland plant species, restores disturbed alkali habitats, and helps to disperse seed. These elements form a dynamic physical and biological matrix that allows *A. c.* var. *notatior* to colonize favorable sites and retreat from less favorable sites in response to disturbance and variations in annual rainfall.

Atriplex coronata var. *notatior* is reported to be a prolific seed producer (Ogden Environmental and Energy Services Corporation (OEESC) 1993, p. 27). Seed viability is believed to be at least 5 years (Bramlet 2004, pers. comm.). The number of viable seeds lost to seed predators or through dispersal to unsuitable habitats is unknown. *Atriplex coronata* var. *notatior* produces fruits capable of floating that may be dispersed during seasonal flooding (Sanders 2004, pers. comm.), specifically by slow-moving water flows during winter and spring rainfall events. Seeds generally germinate in the spring as flows recede, flower in April and May, and set fruit by May or June (Bramlet 1992, pers. comm.). The flowering period may extend to August in years when the water recedes late in the spring season (Munz 1974, p. 355; CNPS 2001, p. 93). The number of *A. c.* var. *notatior* plants in a population varies in response to rainfall, extent of winter flooding, and temperature (Roberts 1993, p. 3). These factors also influence the distribution of plants from one year to the next (Bramlet 1996, p. 3). Hydrology, flooding, and precipitation all play a role in the germination, flowering, fruiting, and seed dispersal of *A. c.* var. *notatior.*

Habitat and Soil Preferences

Atriplex coronata var. notatior is reliant on fixed landscape features that include: (1) Appropriate hydrology that allows for flooding and moist soil conditions during the winter and spring

months, and (2) alkali soils that drain slowly following the winter and spring rains. The ponding of water (but not prolonged inundation) that *A. c.* var. *notatior* needs for growth and reproduction requires these hydrologic conditions and underlying soils.

Atriplex coronata var. *notatior* is found in alkali sink habitat, including alkali grassland and scrub (Bramlet 1996, p. 10). This includes the San Jacinto River and Mystic Lake floodplains, which represent dominant features of the dynamic San Jacinto River Watershed (Tetra Tech and WRIME 2007, p. 26), and smaller floodplains where the taxon resides such as Upper Salt Creek and Alberhill Creek. The San Jacinto River system is ephemeral, characterized by low flows except during and following rain events, whereas flow in the headwater tributaries of the watershed is perennial (Tetra Tech and WRIME 2007, p. 26). Mystic Lake is a natural sink in the San Jacinto Valley; runoff flows into the lake from the valley and, during large flow events, from the upper San Jacinto River (Tetra Tech and WRIME 2007, p. 28). The floodplain of the San Jacinto River occupied by *A. c.* var. *notatior* contains native vegetative communities including alkali sage scrub and Riversidean sage scrub.

The Upper Salt Creek locations of *Atriplex coronata* var. *notatior* are contained in a natural depression of the old Salt Creek tributary within the Salt Creek watershed. Habitats occupied by *A. c.* var. *notatior* in this floodplain include alkaline vernal pools, alkaline grassland, and alkali sink scrub habitats (Regional Environmental Consultants (RECON) 1995 pp. 15, 17; CNDDB 2011b). Major flood control channels, local roads and road ditches, and agricultural drainage ditches currently disrupt historical drainage patterns in Upper Salt Creek, reducing the degree and duration of ponding during the wet season (RECON 1995, p. 18).

Atriplex coronata var. *notatior* has also been observed in the floodplain of Alberhill Creek, which is a part of the larger Temescal Wash region of western Riverside County. This area drains the Gavilan Hills region and the northeastern slope of the Santa Ana Mountains (Boyd 1983, p. 13). The floodplain floods periodically, including seasonal overflow from Lake Elsinore; this produces scouring and ponding in the alkali playa habitat occupied by *A. c.* var. *notatior.*

Within these three floodplains, *Atriplex coronata* var. *notatior* is restricted to highly alkaline, silty-clay soils in association with the Willows soil series and to a lesser extent, the Domino, Traver, Waukena, and Chino soils series (Knecht 1971, p. 23, Bramlet 1993a, p. 4). *Atriplex coronata* var. *notatior* is adapted to grow in slow-draining alkaline-saline clay soils, which are usually found in floodplains or areas of seasonal ponding (Mitchell 1990, p. 1; Tierra Madre Consultants 1990, p. 2) with low permeability and low nutrient availability. In dry periods, these saline soils exhibit a white powdery surface (effloresce) of salts on their surface due to the evaporation of water (Mitchell 1990, p. 1). Within these soil types, *A. c.* var. *notatior* occupies seasonal and ephemeral wetlands, including floodplains and vernal pools that are seasonally inundated, and within areas dominated by alkali playas, alkali scrub, and alkali grassland (Bramlet 1992, pers. comm.); plants are generally found at the upper margin or on mounds within these wetlands (Bramlet 2004, pers. comm.). These habitats are dependent upon adjacent transitional wetlands, marginal wetlands, and upland areas within the watershed (59 FR 64821; December 15, 1994).

Spatial Distribution, Historical Range, and Population Size

At the time of listing, *Atriplex coronata* var. *notatior* was reported to be limited to the San Jacinto, Perris, Menifee, and Elsinore Valleys in western Riverside County. The listing rule identified 11 groupings of individual plants associated with the San Jacinto River and Old Salt Creek tributary drainages with one additional small population (185 plants) found to the southwest near Lake Elsinore (Alberhill Creek) (63 FR 54976; October 13, 1998). In our 5-year review, using data from range-wide surveys of the taxon completed from 1996 to 2001, we determined that *A. c.* var. *notatior* occupied the same general geographic range described at the time of its listing in 1998 (Service 2008, p. 5). Based on these survey data and the limited comprehensive surveys conducted since 2001, we currently believe that *A. c.* var. *notatior* continues to occupy the geographical areas described in our previous final critical habitat rule as occurrence complexes (70 FR 59952; October 13, 2005). These areas are defined by hydrologic processes (such as seasonal flooding) and alkali soil associations and include:

(1) The floodplain of the San Jacinto River at the San Jacinto Wildlife Area, including Mystic Lake;

(2) The floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir;

(3) The Upper Salt Creek Vernal Pool Complex in the western Hemet area; and

(4) The floodplain of Alberhill Creek north of Lake Elsinore (CNDDB 2011b).

The alkaline-saline soils associated with the taxon, primarily the Traver-Domino-Willows Association (Knecht 1971, p. 23), form a U-shaped band around the Lakeview Mountains within basins and valley floors of the greater Perris Valley basin (Tierra Madre Consultants 1990, p. 3) and encompass the San Jacinto River and Old Salt Creek drainages.

Atriplex coronata var. *notatior* is subject to significant natural fluctuations in numbers of observed individuals in any given year, which varies in response to annual rainfall, extent and distribution of winter flooding, and temperature (Roberts 1993, p. 3; Bramlet and White 2004, Table 2). Differences in survey methodologies and proportion of range surveyed may also contribute to differences in annual counts of individuals. In addition, a viable seed bank may exist in the soil at a site for several years (Bramlet 2004, pers. comm.) even if plants are removed or fail to germinate for a season or if the site is disturbed (OEESC 1993, p. 27).

A status review and threat assessment for *Atriplex coronata* var. *notatior,* completed in October 1993 (prior to its listing in 1998), indicated that approximately 78,000 individuals were distributed throughout the ''populations'' defined by the CNDDB EOs (Roberts 1993, p. 3). At the time of listing, we estimated about 27,000 *A. c.* var. *notatior* individuals occupied about 145 acres (ac) (59 hectares (ha)) of habitat (63 FR 54976; October 13, 1998). We used population and habitat acreage estimates from Bramlet and White (2004, Table 2) in our final critical habitat rule (70 FR 59955; October 13, 2005); however, these were combined data from the 1990s for the four geographical areas listed above. In our 2008 5-year review, we indicated a rangewide population estimate of 106,000 individuals of *Atriplex coronata* var. *notatior* based on estimates from surveys conducted in the spring of 2000 (Glenn Lukos Associates, Inc. 2000, p. 15). Approximately 84,000 of these individuals were found on 236.5 ac (95.7 ha) along the San Jacinto River between the Ramona Expressway and the mouth of Railroad Canyon for a total of 61 localities (Glenn Lukos Associates, Inc. 2000, p. 16). This study found that approximately 58,000 of the estimated 83,741 individual plants (or 69 percent) were located within farmed or otherwise altered areas impacted by regular disking and, in some areas, by

additional soil amendments. This report also noted that approximately 7,470 individuals were located within the San Jacinto Wildlife Area to the north (Glenn Lukos Associates Inc. 2000, p. 15).

Additional recent surveys of locations or localities (groups of individual plants) of *Atriplex coronata* var. *notatior* have been completed in portions of the middle and lower San Jacinto River floodplain as well as the Mystic Lake area in 2005, 2008, and 2009 (Rancho Santa Ana Botanic Garden 2006, 2010; White 2009, pers. comm.). Individual numbers of plants ranged from 21 to 220 per site. The Western Riverside Regional Conservation Agency (RCA) has also conducted limited surveys in a portion of the San Jacinto Wildlife Area since 2006 under the Western Riverside County MSHCP Rare Plant Survey program, finding fewer than 100 individuals for all 13 surveyed sites (Malisch, 2010, pers. comm.).

Surveys for sensitive plant species were also conducted within the Upper Salt Creek area in 2005 and 2006 for a proposed highway realignment project (CH2M Hill 2010). These surveys documented over 100,000 individual *Atriplex coronata* var. *notatior* plants within 555 localities in alkali grassland, alkali playa, and vernal pool habitats (CH2M Hill 2010, pp. 5–69, Appendix F (p. 5), and Figure 5.3–11). The largest number of locations of plants (90 percent) and the largest number of individual plants (over 100,000 plants) were all found in one general region of the Upper Salt Creek area (north of the San Jacinto Branch Line, south of Devonshire Avenue, east of California Avenue, and west of Warren Road) (CH2M Hill 2010, p. 5–69).

The results of these recent surveys (2005 through 2009), including some conducted during a wet year, indicate a more significant population of plants within the Upper Salt Creek area than was previously believed for the Upper Salt Creek location. These surveys do not represent a significant change in the distribution of *Atriplex coronata* var. *notatior* since the plant was listed. They do provide more precise locations for *A. c.* var. *notatior* within these two floodplains, and therefore an updated assessment of the distribution of the plant within the geographical area occupied at the time of listing.

Atriplex coronata var. *notatior* is also found in the Alberhill Creek area. In 1997, 185 plants were observed on Willows soils in this floodplain within wetland habitat along Nichols Road, near the mouth of Walker Canyon (CNDDB 2011b, EO16). A survey in 2005 recorded 10 plants south of Nichols Road in nonnative grassland and alkali marsh habitat on Willows soil, within one-quarter mile (365 m) of the 1997 location (AMEC Earth and Environmental Inc., 2006b, p. 29).

Previous Federal Actions—Allium munzii

Please see the final listing rule for *Allium munzii* for a description of previous Federal actions through October 13, 1998 (63 FR 54975). At the time of listing, we concluded that designation of critical habitat for *A. munzii* was not prudent because such designation would not benefit the species. On June 4, 2004, we published a proposed rule to designate 227 ac (92 ha) of critical habitat for *A. munzii* on Federal land (Cleveland National Forest) in western Riverside County, California (69 FR 31569). On June 7, 2005, we published a final rule designating 176 ac (71 ha) of the proposed land as critical habitat for *A. munzii* (70 FR 33015).

On March 22, 2006, we announced the initiation of the 5-year review for *Allium munzii* and opening of a 60-day public comment period to receive information (71 FR 14538). The *A. munzii* 5-year review was signed on June 17, 2009, and found that no change was warranted to the endangered status of *A. munzii.*

On October 2, 2008, a complaint was filed against the Department of the Interior (DOI) and the Service by the Center for Biological Diversity (*CBD* v. *Kempthorne,* No. 08–CV–01348 (S.D. Cal.)) challenging our final critical habitat designation for *Allium munzii.* In an order dated March 24, 2009, the U.S. District Court for the Central District of California, Eastern Division, adopted a Stipulated Settlement Agreement that was entered into by all parties. The agreement stipulates that the Service will reconsider critical habitat designations for both *A. munzii* and *Atriplex coronata* var. *notatior,* and shall submit to the **Federal Register** proposed revised critical habitat determinations for both plants by October 7, 2011. An extension for the completion of the new proposed determinations was granted on September 14, 2011; the new submission date to the **Federal Register** is April 6, 2012. Until the effective date of the final determinations (to be submitted to the **Federal Register** on or before April 6, 2013), the existing final critical habitat designations for *A. munzii* and *A. c.* var. *notatior* remain in place. We are proposing revised critical habitat designations for both *A. munzii* and *A. c.* var. *notatior* in this combined proposed rule.

Previous Federal Actions—Atriplex coronata var. notatior

Please see the final listing rule for *Atriplex coronata* var. *notatior* for a description of previous Federal actions through October 13, 1998 (63 FR 54975), including proposed critical habitat in 1994 (59 FR 64812; December 15, 1994). At the time of the final listing rule in 1998, the Service withdrew the proposed critical habitat designation based on the taxon's continued decline and determined that designation of critical habitat was not prudent, indicating that no benefit over that provided by listing would result from such designation (63 FR 54991; October 13, 1998).

On October 6, 2004, we published a proposed rule to designate critical habitat for *Atriplex coronata* var. *notatior* and identified 15,232 ac (6,164 ha) of habitat that met the definition of critical habitat (69 FR 59844). However, we concluded in the 2004 proposed rule under section 4(b)(2) of the Act that the benefits of excluding lands covered by the Western Riverside County MSHCP outweighed the benefits of including them as critical habitat and no lands were proposed for designation as critical habitat in the proposed rule. On October 13, 2005, we published a final critical habitat determination for *A. c.* var. *notatior* (70 FR 59952); there was no change from the proposed rule. We concluded that all 15,232 ac (6,136 ha) of habitat meeting the definition of critical habitat were located either within our estimate of the areas to be conserved and managed by the approved Western Riverside County MSHCP on existing Public/Quasi-Public Lands, or within areas where the MSHCP would ensure that future projects would not adversely alter essential hydrological processes and therefore all areas were excluded from critical habitat under section 4(b)(2) of the Act.

On March 22, 2006, we announced the initiation of the 5-year review for *Atriplex coronata* var. *notatior* and the opening of a 60-day public comment period to receive information (71 FR 14538). The 5-year review was signed on March 31, 2008, and found that no change was warranted to the endangered status of *A. c.* var. *notatior.*

On October 2, 2008, a complaint was filed against the DOI and the Service by the Center for Biological Diversity (*CBD* v. *Kempthorne,* No. 08–CV–01348 (S.D. Cal.)) challenging our final critical habitat determinations for *Allium munzii* and *Atriplex coronata* var. *notatior* (see *Previous Federal Actions*—Allium Munzii section above for a

detailed account of this lawsuit and settlement agreement). We are proposing revised critical habitat designations for both *A. munzii* and *A. c.* var. *notatior* in this proposed rule.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features that are

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resource management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under section 3(5)(A)(i) of the Act, specific areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain the physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (PCEs) (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, and soil type) that are essential to the conservation of the species.

Under section 3(5)(A)(ii) of the Act, specific areas outside the geographical area occupied by the species at the time it is listed are included in a critical habitat designation upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential for the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of these taxa. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

In particular, we recognize that climate change may cause changes in the arrangement of occupied habitat and will be a particular challenge for biodiversity because the interaction of additional stressors associated with

climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah and Lovejoy 2005, p. 4). Climate models are being generated to examine what will happen in localized regions such as southern California, and many scientists believe warmer, wetter winters and warmer, drier summers will occur within the next century as well as an increase in extreme temperature events (e.g., Field *et al.* 1999, pp. 2–3, 20; Christensen *et al.* 2007, p. 891). Climate-related changes in California have been documented (Croke *et al.* 1998, pp. 2128, 2130; Breashears *et al.* 2005, p. 15144; McMullen and Jabbour 2009, p. 41; Dominguez *et al.* 2010, p. 500), and predictions for California indicate prolonged drought and other climate-related changes into the future (Field *et al.* 1999, pp. 8–10; Lenihan *et al.* 2003, p. 1667; Hayhoe *et al.* 2004, p. 12422; Breashears *et al.* 2005, p. 15144; Seager *et al.* 2007, p. 1181; IPCC 2007, p. 9).

Regional climate change models project that the southwestern California ecoregion occupied by *Allium munzii* and *Atriplex coronata* var. *notatior* could experience a mean annual temperature increase of 1.7 to 2.2 °Celsius (C) (3.06 to 3.96 °Fahrenheit (F)) by 2070 (Point Reyes Bird Observatory (PRBO) Conservation Science 2011, p. 40). These models also project vegetation changes for southwestern California. For example, the area of chaparral or coastal scrub is projected to decrease by 38 to 44 percent by 2070, while grassland, which currently occupies 3 percent of this region, is projected to increase by 345 to 390 percent (PRBO Conservation Science 2011, p. 42). A recent study on the effects of climate change to grassland assemblages in California, as measured by trait differences between native and nonnative plant taxa, predicted an increase in dominance of nonnative taxa in grass assemblages with an increase in temperature (Sandel and Dangremond 2011, p. 11).

The information currently available on the effects of global climate change and increasing temperatures does not adequately predict the location and magnitude of climate change effects to *Allium munzii* and *Atriplex coronata* var. *notatior;* therefore, we are unable to determine if any additional areas may be appropriate to include in this proposed revised critical habitat designation to address the effects of climate change. We specifically request information from the public on the currently predicted effects of climate change on *A. munzii* and *A. c.* var. *notatior* and their habitats (see Public Comments section above).

Physical or Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as revised critical habitat, we consider those physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

Allium munzii

We derive the specific physical or biological features for *Allium munzii* from characteristics of the species' habitat, ecology, and life history as described in the Background section of this proposed rule, the previous critical habitat rule (70 FR 33015; June 7, 2005), the proposed listing rule (59 FR 64812: December 15, 1994), and the final listing rule (63 FR 54975; October 13, 1998). We have based our determination of the physical or biological features for *A. munzii* on the following:

Space for Individual and Population Growth and for Normal Behavior

Allium munzii is a narrow endemic plant that is generally associated with mesic clay soils in western Riverside County, California, along the southern edge of the Perris Basin. Because of the physical geology in this part of the County, clay soils are scattered in a band, several miles wide, extending 40 miles (mi) (64 kilometers (km)) from Gavilan Hills to west of Temescal Canyon and Lake Elsinore at the eastern foothills of the Santa Ana Mountains, and along the Elsinore Fault Zone to the southwestern foothills of the San Jacinto Mountains near Lake Skinner and Diamond Valley Lake. These clay soils often exist as areas of smaller discrete pockets (clay lenses) that are often not identified on coarse-scale soil maps. *Allium munzii* is also found within other soil types. These include soil series of sedimentary or igneous origin within a clay subsoil, or rocky-sandy loam soils that fall between the finer-textured sandy clay loam and the coarser-textured loamy sands and have sufficient silt or clay components to provide coherence (stickiness) to the soil (Brown 2003, p. 3). Clay soils must be deep enough (at least 3 in (7.6 cm)) and remain wet long enough to expand during the rainy season in order to pull the seedling bulb down into the soil so the plant will survive until spring (Wallace 2011, pers. comm.). *Allium munzii* most frequently appears within intact habitats in which the soils and subsoils have been minimally altered or unaltered by ground-disturbing activities (such as disking, grading, excavating, or recontouring) and in more open areas where there is little competition and overcrowding from nonnative plants.

Allium munzii is commonly restricted to locally wetter sites (Boyd 1988, p. 2) on level or slightly sloping (10–20 degrees) areas at elevations from 1,200 ft (366 m) AMSL (Skunk Hollow) to 2,700 ft (823 m) AMSL (Estelle Mountain) (Boyd 1988, p. 4). It is found on both south- and north-facing slopes (L&L Environmental Inc. 2003, p. 26; CNDDB 2011a). The native perennial and annual grassland communities, open coastal sage or Riversidean sage scrub, and occasionally cismontane juniper woodlands found on clay soils in Riverside County provide supporting habitat for *A. munzii.* Coupled with aspect and elevation, these plant communities in western Riverside County provide space for individual and population growth for *A. munzii* and are identified as a physical or biological feature for this species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Clay soil associations for *Allium munzii* include, but are not limited to: Altamont, Auld, Bosanko, and Porterville clays (70 FR 33022; June 7, 2005) or soil series of sedimentary or igneous origin (rocky-sandy loam) with a clay subsoil (such as Cajalco, Las Posas, and Vallecitos). Two populations of *A. munzii* are associated with these rocky or sandy loam soils on igneous rocky outcrops (Greene 1999, pers. comm.; CNDDB 2011a, EO 23). Most populations are associated with clay soils, which have a sticky adobe consistency when wet and large cracks when dry, and with rounded cobbles and boulders embedded within the soil (Boyd 1988, p. 4). Clay soils have

unique physical and chemical properties such as fine grain size, small pore space, and an expansive nature that often result in a hardpan layer that inhibits percolation and root penetration (Donahue *et al.* 1977, p. 50). Clay soils are also rich in mineral nutrients such as calcium, magnesium, and potassium that are held tightly as positively charged ions (cations) and are absorbed by plant roots through cation exchange (Donahue *et al.* 1977, pp. 10, 50, 106, 113, 121).

Allium munzii is adapted to seasonal (summer and fall) drought and variable annual rainfall. Within areas of suitable clay soils or areas of smaller discrete pockets of clay within other soil types, microhabitats that receive or retain more moisture than surrounding areas (due to factors such as exposure, slope, and subsurface geology) are very important in determining where *A. munzii* is found (Boyd 2011b, pers. comm.) and are identified as physical or biological features for this species.

Sites for Reproduction

Sites for *Allium munzii* reproduction are coincident with those for individual and population growth. *Allium munzii* is generally restricted to clay soils but is also found on rocky loam soils (such as North Domenigoni Hills). The sites of these soils in western Riverside County are identified as a physical or biological feature for this species.

We have little information on pollinators or their habitat requirements for this taxon other than anecdotal observations of beetles on *Allium munzii* inflorescences in one population at Temescal Canyon (The Environmental Trust 2002, p. 16). Wind dispersal is the likely mechanism for seed distribution; however, no estimates of dispersal distances are available.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

Allium munzii is found in association with several plant communities, including southern needlegrass grassland, mixed grassland, open coastal sage scrub and Riversidean sage scrub, or occasionally cismontane juniper woodlands (CNPS 2001, p. 67). A characteristic clay soil flora, comprised of herbaceous annuals and perennials, is often associated with the small pockets of clay soils (see Habitat and Soil Preferences section above for *Allium munzii*) in southwestern Riverside County occupied by *A. munzii* (Boyd 1988, p. 4). In some instances, the observed differences in plant communities that occupy clay versus nonclay soils can be very different as is the case for the terraces in Temescal Canyon (Boyd 1988, p. 4). At other locations, such as Alberhill Mountain and the Gavilan Hills region, the grasslands form a mosaic with the surrounding scrub-type vegetation (Boyd 1988, p. 4); *A. munzii* is often found in open areas within these grassland communities.

Allium munzii is also associated with nonnative plants, primarily invasive annuals (CDFG 1989, p. 2). However, nonnative plants have been identified as a threat to several populations of *A. munzii* (CNDDB 2011a, EOs 5, 6, 7, 10, 12, and 16). Activities that promote the spread of invasive weedy grasses, such as disking and grading, can suppress the inflorescence of *A. munzii* (Boyd 1988, p. 3). These activities can also kill plants and destroy hydrological characteristics of the site.

Native and, in some areas, nonnative plant communities found along the southern edge of the greater Riverside-Perris area are identified as a physical or biological feature for this taxon.

Atriplex coronata var. *notatior*

We derive the specific physical or biological features for *Atriplex coronata* var. *notatior* from studies of this taxon's habitat, ecology, and life history as described in the Background section of this proposed rule, the previous critical habitat rule (70 FR 59952; October 13, 2005), and the final listing rule (63 FR 54975; October 13, 1998). We have based our determination of the physical or biological features for *A. c.* var. *notatior* on the following:

Space for Individual and Population Growth and for Normal Behavior

Atriplex coronata var. *notatior* occupies seasonal wetlands, including vernal pools and floodplains that receive seasonal inundation (Bramlet 1993a, p. 1). The taxon occurs within alkali playas, alkali scrub, alkali vernal pools, and alkali grasslands, where these habitats occur in association with slow-draining alkaline soils, particularly the Willows soil series, and to a lesser extent, the Domino, Traver, Waukena, and Chino soil series (Knecht 1971, p. 23 and accompanying map; Bramlet 1992 pers. comm.; Bramlet 1993a, p. 1;). *Atriplex coronata* var. *notatior* is therefore found adjacent to and dependent on floodplains, transitional wetlands, marginal wetlands, and scrub habitat within the watershed (59 FR 64812; December 15, 1994, p. 64821).

The four general geographical areas where *Atriplex coronata* var. *notatior* is known to occur are no longer pristine and have been particularly impacted by agricultural activities (Service 2008, p. 8). Dryland or irrigated farming activities in the San Jacinto River and Old Salt Creek floodplains have been occurring over the past 100 years. Most populations of plants within these locations are on privately owned undeveloped land that is disked frequently or has undergone intensive manure dumping (Roberts 1993, pp. 2–3; Roberts and McMillan 1997, pp. 1–5; Roberts 2004, pers. comm.; CNDDB 2011b). Habitats that support *A. c.* var. *notatior* can recover from disturbance from disking or dryland farming if left fallow and undisturbed (Roberts 1993, pp. 2–3). In the past, disking was intermittent, allowing for recovery periods for *A. c.* var. *notatior* (Roberts 1999, pers. comm.). Additionally, *Atriplex coronata* var. *notatior* can persist in the seed bank within lands that experience short-term disturbances and can germinate with the return of proper conditions (Roberts 1993, pp. 2–3). Thus, in those areas where elements of annual communities persist, disturbed annual grassland and alkali playa habitats can recover with the return of hydrological conditions to support *A. c.* var. *notatior* and therefore provide the physical or biological features for the taxon. However, once the seed bank is removed through activities such as laser leveling for agriculture development or significant alternation of soil chemistry, plants are unlikely to reestablish without extensive soil restoration (Bramlet 2010, pers. comm.). We have determined that alkali vernal pools and floodplains that receive seasonal inundation, including alkali playas, alkali scrub, alkali vernal pools, and alkali grasslands habitats, are a physical or biological feature for *A. c.* var. *notatior.*

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Atriplex coronata var. *notatior* requires a hydrologic regime that includes seasonal and large-scale flooding in combination with alkaline soils that exhibit low permeability and low nutrient availability. The plants occur along floodplains defined by seasonal ponding or flooding in the San Jacinto River and Upper Salt Creek drainages and within the Alberhill Creek floodplain in soils where mineral nutrients are tightly bound to silt and clay particles (Roberts 2004, pers. comm.). Depending on the amount of precipitation, the duration and extent of flooding or inundation can be extremely variable year to year. Seasonal flooding (typically over the winter and early spring) is an important process that

creates suitable alkali habitat for *A. c.* var. *notatior,* stimulates germination, prevents invasion from flood-intolerant plant species, restores disturbed areas, and helps disperse seed (Roberts 2004, pers. comm.). Additionally, large-scale flooding events, such as 10-, 50-, or 100-year floods, can restore or reset alkali habitat that has been colonized by upland species or disturbed by agricultural activities (Bramlet 1992, pers. comm.). The frequency, duration, and extent of seasonal ponding or flooding creates a dynamic matrix of habitat that allows *A. c.* var. *notatior* to colonize favorable sites and retreat from less favorable sites in response to disturbance and variations in annual rainfall. Irreversible actions (such as paving, redirection of sheet flow, or year-round flooding) that alter the hydrology of the seasonal wetlands and upland watersheds, or infringe upon the wetlands, may threaten the survival of *A. c.* var. *notatior.*

The presence of *Atriplex coronata* var. *notatior* in floodplains depends on seasonal or large-scale flooding within valley drainages, as well as precipitation and runoff from the surrounding hillsides. The watershed and the upland areas that provide water to these floodplains are important for retaining the flooding regime. While some runoff originates from undeveloped hillsides, much of the watershed where *A. c.* var. *notatior* occurs has been developed, and the flows traveling to the ponded habitats can include urban runoff (RECON 1995, pp. 18, 21). Unless captured and routed to storm water detention (desilting) basins, this runoff can transport a variety of pollutants that can be detrimental to native plant communities, particularly the unique soil and vegetation characteristics of vernal pool and alkali playa habitats and the species that occupy them (Clark *et al.* 1998, p. 251; Cahill *et al.* 2001, p. 820; Battaglin *et al.* 2009, p. 303). Therefore, a hydrologic regime that includes seasonal and large-scale flooding in combination with slow drainage in alkaline soils with low nutrient loads is identified as a physical or biological feature for this taxon.

Sites for Reproduction

Flooding or ponding of water during the rainy season, as indicated above, is important for the reproduction, germination, and seed dispersal of *Atriplex coronata* var. *notatior.* Two types of flood events are important for *A. c.* var. *notatior,* and they occur at two distinct scales: local, seasonal flooding and large-scale flooding (Roberts 2004, pers. comm.). Seasonal flooding determines the area of germination and affects local distribution of individual plants, while large-scale flooding (generally 20- to 50-year events) disrupts entire habitats with slow-moving water that can be present for weeks or months and rework the structure of the vegetative communities (Roberts 2004, pers. comm.). Together, these natural processes prevent invasion from upland vegetation, restore disturbed alkali habitats, and help distribute seed throughout the habitat. Natural alkali playa flood events therefore promote the colonization of *A. c.* var. *notatior* colonization within favorable sites, as well as the retreat from less favorable sites, in response to disturbance and variations in annual rainfall, thus creating conditions in which population abundance shifts annually through a mosaic of habitat and flooding (Bramlet 1996, p. 2–3). Relatedly, *A. c.* var. *notatior* is known to produce floating seeds that are likely dispersed during seasonal flooding by slow-moving flows within the floodplains and vernal pools where the plant occurs (Sanders 2004, pers. comm.). Therefore, flooding provides the conditions that stimulate the germination of *A. c.* var. *notatior* and controls the distribution of plants in the surrounding semi-arid environment both year-to-year and over decades. These natural floodplain processes are integral to the life history of *A. c.* var. *notatior* and are considered to be a physical or biological feature necessary to maintain a healthy population.

Primary Constituent Elements

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of *Allium munzii* and *Atriplex coronata* var. *notatior* within the geographical area occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be the elements of physical or biological features that provide for a species' life-history processes and, under the appropriate conditions, are essential to the conservation of the species.

Allium munzii

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs specific to *Allium munzii* are:

(1) Clay soil series of sedimentary origin (for example, Altamont, Auld, Bosanko, Porterville), clay lenses (pockets of clay soils) of those series that may be found as unmapped inclusions in other soil series, or soil series of sedimentary or igneous origin with a clay subsoil (for example, Cajalco, Las Posas, Vallecitos):

(a) Found on level or slightly sloping landscapes or terrace escarpments;

(b) Generally between the elevations of 1,200 to 2,700 ft (366 to 823 m) above mean sea level;

(c) Within intact natural surface and subsurface structures that have been minimally altered or unaltered by ground-disturbing activities (for example, disked, graded, excavated, or recontoured);

(d) Within microhabitats that receive or retain more moisture than surrounding areas, due in part to factors such as exposure, slope, and subsurface geology; and

(e) Part of open native or nonnative grassland plant communities and clay soil flora, including southern needlegrass grassland, mixed grassland, and open coastal sage scrub or occasionally in cismontane juniper woodlands; or

(2) Outcrops of igneous rocks (pyroxenite) on rocky-sandy loam or clay soils within Riversidean sage scrub, generally between the elevations of 1,200 to 2,700 ft (366 to 823 m) above mean sea level.

With this proposed revised designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species. All units and subunits proposed to be designated as critical habitat are currently occupied by *Allium munzii* and are within the geographical areas occupied at the time of listing.

Atriplex coronata var. *notatior*

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the taxon's life-history processes, we determine that the PCEs specific to *Atriplex coronata* var. *notatior* are:

(1) Wetland habitat including floodplains and vernal pools:

(a) Associated with native vegetation communities, including alkali playa, alkali scrub, and alkali grasslands; and

(b) Characterized by seasonal inundation or localized flooding, including infrequent large-scale flood events with low nutrient loads; and

(2) Slow-draining alkali soils including the Willows, Domino, Traver, Waukena, and Chino soil series with:

(a) Low permeability;

(b) Low nutrient availability; and

(c) Seasonal ponding and evaporation.

With this proposed revised designation of critical habitat, we intend to identify the physical or biological

features essential to the conservation of the species. All units and subunits proposed to be designated as critical habitat are currently occupied by *Atriplex coronata* var. *notatior* and are within the geographical areas occupied at the time of listing.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain physical or biological features which are essential to the conservation of the species and which may require special management considerations or protection. In all units or subunits, special management considerations or protection of the essential features may be required to provide for the growth, reproduction, and sustained function of the habitat on which *Allium munzii* and *Atriplex coronata* var. *notatior* depend.

Allium munzii

A detailed discussion of threats to *Allium munzii* and its habitat can be found in the final listing rule (63 FR 54975; October 13, 1998), the previous proposed and final critical habitat designations (69 FR 31569, June 4, 2004; 70 FR 33015, June 7, 2005), and the *A. munzii* 5-year review signed on June 17, 2009 (Service 2009). Actions and development that alter habitat suitable for the species or affect the natural hydrologic processes upon which the species depends could threaten the species.

The physical or biological features essential to the conservation of *Allium munzii* all face ongoing threats that may require special management considerations or protection. Threats that may require special management considerations or protection of the physical or biological features include:

(1) Loss or degradation of native plant communities, such as grassland, open coastal sage scrub, and cismontane juniper woodlands, due to urban development, agricultural activities, and clay mining (PCEs 1 and 2);

(2) Disturbance of clay or other occupied soils by activities such as off-road vehicles (ORV) and fire management (PCEs 1 and 2);

(3) Invasion of nonnative plant species (PCEs 1 and 2); and

(4) Long-term threats including climatic variations such as extended periods of drought (PCE 1) (63 FR 54982–54986, October 13, 1998; 69 FR 31571, June 4, 2004; 70 FR 33023, October 13, 2005; Service 2009, pp. 10–22).

Further discussion of specific threats facing individual proposed revised critical habitat units or subunits for *Allium munzii* is provided in the unit descriptions under the Proposed Revised Critical Habitat Designation section below. In these proposed revised critical habitat units, special management considerations or protection may be needed to ensure the long-term existence of clay and alluvial soil integrity within habitats that support the physical or biological features essential to the conservation of *A. munzii.*

Special management considerations or protection for areas occupied by *Allium munzii* include:

(1) Protection of habitat from urban development or destruction to maintain integrity of clay soils;

(2) Reduction of land conversion to agricultural uses and reduction of disking or dryland farming to maintain native habitats;

(3) Management and control of invasive nonnative plants to provide open areas for growth and reproduction; and

(4) Land acquisition or conservation easements for occurrences not already conserved to protect those populations within occupied habitats.

Atriplex coronata var. *notatior*

A detailed discussion of threats to *Atriplex coronata* var. *notatior* and its habitat can be found in the final listing rule (63 FR 54975; October 13, 1998), the previous proposed and final critical habitat designations (69 FR 59844, October 6, 2004; 70 FR 59952, October 13, 2005), and the *A. c.* var. *notatior* 5-year review signed on March 31, 2008 (Service 2008). Actions and development that alter habitat suitable for *A. c.* var. *notatior* or affect the natural hydrologic processes upon which it depends could threaten the taxon. The physical or biological features essential to the conservation of *A. c.* var. *notatior* may require special management considerations or protection to reduce or eliminate the following threats:

(1) Loss of alkali vernal plain habitat (i.e., alkali playa, alkali scrub, alkali vernal pool, alkali annual grassland) and fragmentation as a result of activities such as urban development, manure dumping, animal grazing, agricultural activities, ORV activity, weed abatement, and channelization (PCEs 1 and 2);

(2) Indirect loss of habitat from the alteration of hydrology and floodplain dynamics (diversions, channelization, excessive flooding) (PCEs 1 and 2);

(3) Competition from nonnative plants (PCE 1); and

(4) Long-term threats including water pollution, climatic variations, and changes in soil chemistry and nutrient availability (PCE 1) (63 FR 54983, October 13, 1998; 69 FR 59847, October 6, 2004; 70 FR 59966, October 13, 2005; Service 2008, pp. 8–17).

Further discussion of specific threats facing individual units is provided in the unit descriptions under the Proposed Revised Critical Habitat Designation section below. Special management considerations or protection for *Atriplex coronata* var. *notatior* include:

(1) Protection of habitat, including underlying soils and chemistry, from development or destruction;

(2) Protection of floodplain processes to maintain natural, seasonal flooding regimes;

(3) Reduction of land conversion to agricultural uses and reduction of disking and dryland farming to maintain native habitats;

(4) Land acquisition or conservation easements for occurrences not already conserved to protect those populations within occupied habitats; and

(5) Implementation of manure and sludge dumping ordinances to maintain soil chemistry.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirement of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are not currently proposing to designate any areas outside the geographical areas currently occupied by *Allium munzii* or *Atriplex coronata* var. *notatior* because we consider those areas to be of sufficient quality, extent, and distribution to provide for the conservation of these taxa. We believe that the present quality habitat has, by survey, the demonstrated capacity to support self-sustaining occurrences of these taxa and that these areas containing the physical or biological features essential to the conservation of the species are dispersed in its range in a manner that provides for the survival and recovery of these taxa. We are proposing to designate as critical habitat some specific areas within the geographical

range currently occupied by *A. munzii,* but that were not known to be occupied at the time of listing. However, based on the best available scientific information, the life history of the plant (see Background section), and the limited survey efforts prior to listing, we believe that these specific areas are within the geographical area occupied by the species at the time of listing.

We reviewed the final critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior* (70 FR 33015, June 7, 2005; 70 FR 59952, October 13, 2005, respectively), information from State, Federal, and local government agencies, and from academia and private organizations that have collected scientific data on the species. We also used the information provided in the 5-year reviews for *A. munzii* and *A. c.* var. *notatior* (Service 2008; Service 2009). Other information we used for this proposed rule includes: CNDDB (CNDDB 2011a; CNDDB 2011b); reports submitted during consultations under section 7 of the Act; analyses for individual and regional HCPs where *A. munzii* and *A. c.* var. *notatior* are covered species; data collected from reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act; information received from local species experts; published and unpublished papers, reports, academic theses, or surveys; Geographic Information System (GIS) data (such as species population and location data, soil data, land use, topography, aerial imagery, and ownership maps); and correspondence with the Service from recognized experts. We analyzed this information to determine the specific areas within the geographical area occupied by the taxa at the time of listing that contain the physical or biological features essential to the conservation of *A. munzii* and *A. c.* var. *notatior.*

Allium munzii

Allium munzii occurs in relatively small population sizes, has a narrow geographic range (western Riverside County), and exhibits high habitat specificity, all of which make it vulnerable to land use changes. According to the Western Riverside County MSHCP, *A. munzii* is considered a narrow endemic plant species, a plant species that is highly restricted by its habitat affinities, edaphic requirements, or other ecological factors (Dudek and Associates 2003, pp. Def/Acr-ix and 6–28). Based on examination of soil maps for western Riverside County, Boyd (1988, p. 2) concluded that much of the scattered clay soil areas in the Perris Basin were heavily disturbed and estimated up to an 80 to 90 percent loss of potential *A. munzii* habitat in 1988.

We conducted a spatial analysis using a GIS-based approach to determine the percent of mapped clay soils (Altamont, Auld, Bosanko, Porterville) that were converted or lost to agricultural or urban land uses in the Perris Basin (based on 2007 land use GIS data). This is a conservative approach given that smaller pockets of clay soils are not shown on coarse-scale soil maps and may have been lost since the completion of the Riverside County soil map in 1971. We estimated that approximately 32 percent of these clay soils remain within suitable *Allium munzii* habitats (or a 67 percent loss) due to urban and agricultural development on plant communities associated with *A. munzii,* and includes both known and unknown locations of *A. munzii* populations. Based on the narrow endemism of this species, its reliance on clay soil types that are limited in geographic range in western Riverside County, and our estimated loss of 67 percent of these soils to urban or agricultural development, we believe that all of the units and subunits (as defined below and in the Summary of Changes from Previously Designated Critical Habitat section of this proposed rule) represent the present geographical area containing the physical or biological features essential to the conservation of this species which may require special management considerations or protection. This designation includes 17 of the CNDDB's EOs described in the Background section above.

We are proposing to designate as critical habitat specific areas within the geographical area occupied by *Allium munzii* at the time of listing in 1998. These specific areas include some areas within the present range of the species that had not yet been identified as occupied at the time of listing. We have determined that these areas are within the geographical area occupied by *A. munzii* at the time of listing based on the species life history and habitat requirements (see Background section above) and the following: (1) Locations of plants reported or detected since listing in 1998 are in close proximity (less than 1 mi (1.5 km)) to previously known locations and, (2) of the 10 new CNDDB-defined EOs reported since early 1980s surveys by Boyd (1988), 6 are within previous known occupied geographic regions of the greater Perris Basin (Temescal Canyon-Gavilan Hills/Plateau, Murrieta-Hot Springs areas) and the other 4 locations were found after surveys in the early 1990s within the Elsinore Peak (Santa Ana Mountains) and Domenigoni Hills regions. Additionally, we believe this currently occupied habitat was occupied at the time of listing given the species' naturally discontinuous distribution and occupation of microhabitats; the difficulty of accurately surveying for individual plants given the dormant (underground) phase of its life cycle prior to detection; and its restriction to small areas of clay soils in western Riverside County within the designated units and subunits.

For defining critical habitat units, we looked at elevation (1,200 to 2,700 ft (366 to 823 m) AMSL), soil types (primarily clay soils), spatial distribution of 17 CNDDB-defined EOs from CNDDB (CNDDB 2011a), 1 location identified by Ellstrand not included in the CNDDB database (Ellstrand 1993, 1994) (proposed EO 24, as mentioned in the Spatial Distribution, Historical Range, and Population Size section for *Allium munzii*), rare plant monitoring survey results from Western Riverside County Regional Conservation Authority (RCA) (Western Riverside County RCA 2006, 2007, 2008, 2009, 2010, and 2011), and other surveys.

To identify several unit and subunit boundaries for this proposed revised critical habitat, we consulted a species expert with considerable field experience in surveying for *Allium munzii.* Given the difficulty in observing individual plants due to the timing of inflorescence, stage of growth, and large areal extent (as discussed in the Background section), Boyd (2011b, pers. comm.) recommended expanding the area surrounding an observation of a location of plants (either a group or just a few individuals) to capture additional individual plants that might not have been observed. Based on extensive field experience (approximately 30 years) with *A. munzii,* Boyd (2011b, pers. comm.) recommended including a 100-m (328-ft) roughly circular area (or 50-m (164-ft) radius) to define the unit or subunit boundaries. Because *A. munzii* is strongly associated with clay soils (which are often found as pockets of small scattered (but discrete) clay lenses that are typically too small to be identified on coarse-soil soil maps (see the Habitat and Soil Preferences section for *A. munzii* above)), we used Boyd's recommendation of expanding the boundaries of observed plant locations to capture unobserved individuals in defining critical habitat units and subunits. Specifically, we used the Soil Conservation Service (now Natural Resources Conservation Service) soil mapping unit (2.47 ac or 1 ha) to refine Boyd's recommended radius of 164 to

183 ft (50 to 56 m). The 183-ft (56-m) radial distance translates into a 2.43-ac (0.98-ha) area, which is approximately equal to the soil mapping unit of 2.47 ac (1 ha). This methodology accounts for both potentially unobserved plants associated with CNDDB-defined EOs in areas of clay or rocky-sandy loam soils as well as encompassing the unmapped pockets of clay soil. In conjunction with the reported EOs, survey reports, and aerial photographs, this approach represents the best available information regarding areas currently occupied by *A. munzii* and that contain the physical or biological features essential to the conservation of the species and therefore accurately defines the unit and subunit polygons.

The following sources were used to define microhabitats (i.e., depressional areas that retain moisture) for *Allium munzii,* which included using underlying geology, slope, and aspect of hillsides within open areas of native and nonnative plant communities:

(1) For evaluating microtopography, including slope, aspect, and elevation, we used: (a) Digital elevation model (DEM) data from U.S. Geological Survey's (USGS) EROS Data Center, and (b) USGS 1:24,000 digital raster graphics (USGS topographic maps).

(2) For evaluating vegetative communities, spatial arrangement of these communities, and presence of disturbance or development, we used: (1) U.S. Department of Agriculture (USDA) National Agriculture Imagery Program (NAIP) aerial photography for 2010, and (b) ArcGIS online I3 Imagery Prime World 2D), validating conclusions made from examining these two satellite imagery data layers using high resolution Google Earth imagery.

(3) For subsurface geology, we used the USGS GIS layer of the Preliminary Digital Geologic Map of the Santa Ana, 1:100,000 quadrangle (USGS 2004).

We acknowledge that the extent of the geographic areas surveyed and the survey methodologies may differ within and among the recorded plant locations from year to year (see discussion regarding the detectability of this species in the Background section above). Based on our GIS analysis, the 5 units, further divided into 13 subunits, we propose as critical habitat are as follows: (1) Gavilan Hills (6 subunits), (2) Temescal Valley (4 subunits), (3) Elsinore Peak, (4) South Perris-Bachelor Mountain (3 subunits), and (5) North Domenigoni Hills. All units and subunits are within the present geographical range of the species and are currently occupied.

Atriplex coronata var. *notatior*

Atriplex coronata var. *notatior* is endemic to the San Jacinto, Perris, Menifee, and Elsinore Valleys of western lowland Riverside County, and is restricted to highly alkaline, silty-clay soils (59 FR 64813; December 15, 1994). At the time of listing, 12 populations of *A. c.* var. *notatior* were known (corresponding to the CNDDB EOs at the time), 11 of which were associated with two general locations (the San Jacinto and Old Salt Creek floodplains). We have grouped the 12 CNDDB EOs and results from other surveys into four general locations (described below) and developed boundaries for three critical habitat units based on the geographic locations of observed plants.

All of the units (as defined below and in the Summary of Changes from Previously Designated Critical Habitat section) are within the geographical area occupied by *Atriplex coronata* var. *notatior* at the time of listing. These units contain the physical or biological features that are essential to the conservation of this taxon and may require special management considerations or protection.

Atriplex coronata var. *notatior* is known from four general locations in western Riverside County, as previously identified in the 2004 proposed critical habitat rule (69 FR 59844; October 6, 2004). All three units proposed as critical habitat encompass these four areas and are within the geographical area occupied by the taxon at the time of listing. This range includes records of 15 EOs now recorded in the CNDDB database (CNDDB 2011b) and other survey data. To define critical habitat units, we examined the following information:

(1) Slow-draining alkali soils (Willows, Domino, Traver, Waukena, and Chino soil series) with low permeability.

(2) Seasonal and large-scale flood events (or ponded water) and subsequent scouring to create bare soils, as illustrated in historical aerial photographs.

(3) Spatial distribution of the EOs recorded in the CNDDB database (CNDDB 2011b), and

(4) Plant monitoring survey results from Western Riverside County RCA (2007, 2008, 2009, 2010, and 2011) and other surveys.

We recognize that the geographic extent surveyed and survey methodologies may differ within and among the locations of individual or groups of plants from year to year (see discussion regarding the detectability of this species in Background section above). Based on this analysis we defined the following three units: (1) Floodplain of the San Jacinto River from the San Jacinto Wildlife Area (including Mystic Lake) to Railroad Canyon Reservoir, (2) Upper Salt Creek, and (3) Alberhill Creek. All units are within the present geographical range of the taxon and are currently occupied.

Other Factors Involved With Delineating Critical Habitat

When determining proposed revised critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because these lands lack physical or biological features necessary for *Allium munzii* and *Atriplex coronata* var. *notatior.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action may affect the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are within the geographical areas occupied by these taxa at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the taxa. For *Allium munzii,* our proposed revision includes extant locations of plants not known at the time of listing, but that are within the geographical area occupied at the time of listing. All units contain the physical or biological features that are essential to the conservation of these taxa and may require special management considerations or protection.

Summary of Changes From Previously Designated Critical Habitat

Allium munzii

The areas identified in this proposed rule constitute a proposed revision to the critical habitat rule for *Allium munzii* published on June 7, 2005 (70 FR 33015) based on the following principles:

(1) We refined our method identifying the locations of *Allium munzii* and the

PCEs within those locations to more accurately reflect the physical or biological features that are essential to the conservation of *A. munzii.* We consolidated the PCEs to identify the primary element and then listed the related supporting components of that element. Specifically, we reviewed the CNDDB EO reports and other survey reports to define PCEs that reflect the physical and ecological characteristics found within the range of the CNDDB-defined EOs. This resulted in removing the previous PCE listed as alluvial soil series and reclassifying the locations of plants (with one exception) into their appropriate clay soil associations.

(2) We improved our mapping methodology to more accurately define the critical habitat boundaries and to better represent those areas that possess the physical or biological features essential to the conservation of *Allium munzii* using soils, elevation, and spatial configuration known from the most recent occurrence information. In this rule, we have grouped locations of *A. munzii* plants into critical habitat units and subunits and labeled each grouping as an occurrence; this is different than the term ''Element Occurrence'' used by CNDDB. As noted earlier, not all survey reports are included in the CNDDB database, particularly recent surveys, nor are the boundaries defined by CNDDB precise in location (some were recorded prior to Global Positioning System (GPS) technology or with older and less accurate GPS units); thus, for the purposes of defining units and subunits in this proposed rule, the polygons and point locations defined by CNDDB may not encompass all of the physical or biological features essential to the conservation of the species.

The areas identified in this proposed rule constitute a proposed revision to the critical habitat units designated for *Allium munzii* published on June 7, 2005 (70 FR 33015). The differences in these areas resulted from using the following methods:

(1) We combined the EO data recorded in the CNDDB database (CNDDB 2011a) with 2005 to 2011 survey results from the Western Riverside County Resource Conservation Agency (RCA) (Western Riverside County RCA 2005, 2008) and Rancho Santa Ana Botanical Garden (Boyd 2011c, pers. comm.). Using the 183-ft (56-m) radius discussed above, we delineated units and subunits.

(2) We combined one or both of the CNDDB EO spatial datasets with GIS-based maps of Porterville clay soils or other clay soil types to create the units and subunits using the 183-ft (56-m) boundary, and we incorporated recent survey data.

(3) For a few of the smaller subunits defined by point locations of small numbers of individual plants, we used CNDDB's previously defined 262-ft (80-m) radius polygon to determine the subunit boundary (CNDDB 2011a).

(4) We also identified several areas we are considering for exclusion from the final revised critical habitat designation under section 4(b)(2) of the Act. Exclusions in our upcoming final rule may differ from the exclusions we made in the 2005 final critical habitat designation.

Atriplex coronata var. *notatior*

The areas identified in this proposed rule constitute a proposed revision to the critical habitat designated for *Atriplex coronata* var. *notatior* published on October 13, 2005 (70 FR 59952). The differences are as follows:

(1) We refined the PCEs to more accurately describe the physical or biological features essential to the conservation of *Atriplex coronata* var. *notatior*. We consolidated the PCEs to identify the primary element and relevant factors to that element based on review of the CNDDB database and recorded EOs.

(2) We improved our mapping methodology to more accurately define the critical habitat boundaries and to better represent those areas that possess the physical or biological features essential to the conservation of *Atriplex coronata* var. *notatior* using soils, elevation, and spatial configuration based on updated plant location information. We delineated boundaries using an intersection of seasonal ponding or flooding (and resulting bare soils), as observed in historical and recent aerial photographs (Riverside County Flood Control District photos from 1962, 1974, 1978, 1980, and 2010), with *A. coronata* var. *notatior* soil preferences (soil maps from Knecht 1971). In doing so, we also removed areas of urban or otherwise developed lands in all these areas. In addition, areas identified as ''Right-of-Way'' in the most current parcel database available from the Riverside County Assessor's Office were classified as either local land or State land depending on whether they were located adjacent to local roadways or Federal highways under State control.

(3) We identified several areas we are considering for exclusion from the final revised critical habitat designation under section 4(b)(2) of the Act. Exclusions in our upcoming final revised critical habitat designation may differ from the exclusions we made in the 2005 final critical habitat designation.

(4) We revised the previous critical habitat units based on surveyed locations (or localities) of *Atriplex coronata* var. *notatior* as described above. As discussed above, we have grouped locations of *A. coronata* var. *notatior* plants into four general geographical areas and delineated these as our three critical habitat units. This delineation includes the EOs defined by CNDDB and locations of individual plants reported from other surveys.

Proposed Revised Critical Habitat Designation

Allium munzii

We are proposing approximately 889 ac (360 ha) in 5 units containing 13 subunits as critical habitat for *Allium munzii.* The areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for *A. munzii.* The units and subunits we propose as critical habitat are: (1) Gavilan Hills (Unit 1; 6 subunits), (2) Temescal Valley (Unit 2; 4 subunits), (3) Elsinore Peak (Unit 3), (4) South Perris and Bachelor Mountain (Unit 4; 3 subunits), and (5) North Domenigoni Hills (Unit 5). The approximate area of proposed revised critical habitat and land ownership within the units and subunits is shown in Table 1 below.

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TABLE 1. Proposed revised critical habitat for *Allium munzii*. (Area estimates reflect all land within critical habitat boundaries.)

Unit and Subunit	Ownership				Total Area
	Federal Land	State Land	Local Land[1]	Private Land	
Unit 1: Gavilan Hills	**--**	**--**	**80.4 ac (32.6 ha)**	**34.3 ac (13.9 ha)**	**114.7 ac (46.4 ha)**
1A. Estelle Mountain	--	--	2.3 ac (0.9 ha)	0.5 ac (0.2 ha)	2.8 ac (1.1 ac)
1B. Dawson Canyon	--	--	1.2 ac (0.5 ha)	3.6 ac (1.5 ha)	4.8 ac (1.9 ha)
1C. Gavilan Plateau	--	--	16.5 ac (6.7 ha)	25.7 ac (10.4 ha)	42.2 ac (17.1 ha)
1D. Ida-Leona	--	--	--	4.5 ac (1.8 ha)	4.5 ac (1.8 ha)
1E. Northeast Alberhill	--	--	58 ac (23.5 ha)	--	58 ac (23.5 ha)
1F. North Peak	--	--	2.4 ac (1.0 ha)	--	2.4 ac (1.0 ha)
Unit 2: Temescal Valley	**--**	**--**	**217.4 ac (88 ha)**	**264 ac (107 ha)**	**481 ac (195 ha)**
2A. Sycamore Creek	--	--	--	12.3 ac (5.0 ha)	12.3 ac (5.0 ha)
2B. De Palma Road	--	--	--	12.8 ac (5.2 ha)	12.8 ac (5.2 ha)
2C. Alberhill Mountain	--	--	212.9 ac (86.1 ha)	87.6 ac (35.4 ha)	300.5 ac (121.5 ha)
2D. Alberhill Creek	--	--	4.5 ac (1.8 ha)	150.9 ac (61 ha)	155.4 ac (62.8 ha)
Unit 3: Elsinore Peak	**63.1 ac (25.5 ha)**	**35.3 ac (14.3 ha)**	**--**	--	**98.4 ac (39.8 ha)**
Unit 4: South Perris and Bachelor Mountain	**--**	**--**	**105 ac (42.5 ha)**	**81.9 ac (33 ha)**	**186.8 ac (75.6 ha)**
4A. Scott Road	--	--	25.1 ac (10.2 ha)	7.5 ac (3.1 ha)	32.6 ac (13.3 ha)
4B. Skunk Hollow	--	--	0.5 ac (0.2 ha)	74.3 ac (30.1 ha)	74.8 ac (30.3 ha)
4C. Bachelor Mountain	--	--	79.3 ac (32.1 ha)	--	79.3 ac (32.1 ha)
Unit 5: North Domenigoni Hills	**--**	**--**	**8.2 ac (3.3 ha)**	**--**	**8.2 ac (3.3 ha)**
Total	**63.1 ac (25.5 ha)**	**35.3 ac (14.3 ha)**	**411 ac (166 ha)**	**380.2 ac (154 ha)**	**889 ac (360 ha)**

[1] Areas identified as "Right-of-Way" in the most current parcel database available from the Riverside County Assessor's Office were classified as Local Land if they were located adjacent to local roadways and State Land if they were located adjacent to Federal highways under State control.

Note: Area sizes may not sum due to rounding.

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Unit 1: Gavilan Hills

Unit 1 consists of 114.7 ac (46.4 ha). The Gavilan Hills Unit is located at the northwestern edge of the Perris Basin, northeast of the Santa Ana Mountains in western Riverside County. This unit

includes six occupied subunits within upland areas west of State Highway 74, south of Cajalco Road, and northeast of Interstate 15, all of which are within the geographical area occupied at the time of listing and which contain the physical or biological features essential to the conservation of the species. The Gavilan Hills region is geologically and topographically diverse with many soil types. Clay soil series occupied by *Allium munzii* in the Gavilan Hills Unit include Bosanko, Altamont, and Porterville; however, small pockets of clay (less than 2.47 ac (1 ha)) are often not indicated on soil maps (Boyd 1983, p. 19). The elevational range of the five subunits is 1,547 ft (472 m) to 2,632 ft (802 m) AMSL. Vegetation of the Gavilan Hills region is a complex association of scrub, woodland, and grass communities, including annual grasslands characterized by invasive nonnative plants in those areas where native communities have been heavily disturbed (Boyd 1983, pp. 32–33). Threats identified for the Gavilan Hills Unit include invasive nonnative plants, road construction and urban development, grazing, ORV activity, illegal dumping, and mowing for fire abatement. Therefore, the features essential to the conservation of the species in this unit may require special management considerations or protection to minimize impacts resulting from these threats (see Special Management Considerations or Protection section above).

Within the Gavilan Hills Unit, we are considering excluding all subunits within the planning area of the Western Riverside County MSHCP and the Lake Mathews MSHCP under section 4(b)(2) of the Act (see Exclusions section).

Subunit 1A: Estelle Mountain

The Estelle Mountain subunit (2.8 ac (1.1 ha)) is located within native and nonnative grassland habitat within the Lake Mathews/Estelle Mountain Reserve (2.3 ac (0.9 ha)) and on private land (0.48 ac (0.2 ha)). The Lake Mathews Multiple Species Habitat Conservation Plan/Natural Communities Conservation Plan (Lake Mathews MSHCP) assisted in establishing this multi-jurisdictional reserve encompassing over 12,000 ac (4,856 ha) and managed for multiple species use, including *Allium munzii,* in western Riverside County. The combined reserve is composed of a Multiple Species Reserve that consists of the existing State Ecological Reserve and the Lake Mathews HCP Mitigation Bank, Lake Mathews/Estelle Mountain Core Stephens' Kangaroo Rat Reserve, the Estelle Mountain Ecological Reserve owned by CDFG, and land owned by the Bureau of Land Management (BLM) located within the Riverside County Habitat Conservation Agency's Stephens' Kangaroo Rat Core Reserve. Collectively, these lands comprise the existing Lake Mathews/Estelle Mountain Existing Core ''C'' area of the Western Riverside County MSHCP (Service 2004, p. 65). Management of the reserve focuses largely on the Stephens' kangaroo rat (*Dipodomys stephensi*) and coastal California gnatcatcher (*Polioptila californica californica*). The reserve is not open to the public for recreational use, but is subject to grazing, illegal dumping, and ORVs.

This subunit contains clay soils (not illustrated on coarse-scale soils map) on cobble deposits in a small drainage, which creates the space and microhabitat (PCE 1) that meets the habitat needs for *Allium munzii* and comprises the physical or biological features essential to the conservation of the species.

Subunit 1B: Dawson Canyon

The Dawson Canyon subunit (4.8 ac (1.9 ha)) is located on private land to the east of Estelle Mountain. This occurrence, with a significant number of plants (more than 1,000) seen in 1986, has been described as scattered stands of *Allium munzii* within grassy flats and slopes containing clay soils on cobble deposits (CNDDB 2011a, EO 5). This subunit contains clay soils, sloping topography, and subsurface geology (PCE 1) that provide substrate and conditions suitable for the persistence of *A. munzii* and comprise the physical or biological features essential to the conservation of the species. This subunit is subject to threats related to road development and invasive, nonnative plants (CNDDB 2011a).

Subunit 1C: Gavilan Plateau

The Gavilan Plateau subunit (42.2 ac (17 ha)), bisected by a road, is located within Harford Springs County Park (north of Ida-Leona Road) and on private land (south of Ida-Leona Road) in grassy openings on clay soils. Populations of *Allium munzii* exceeded 5,000 plants at both locations in the early 1990s (CNDDB 2011a, EO 2). The private land portion of this subunit has been disked in the past and is threatened by urban development (CNDDB 2011a). Several locations of *A. munzii,* with small numbers of individual plants, were found on clay soils within the County Park in surveys conducted by Western Riverside County RCA in 2005 and 2008 (Drennen 2011, pers. comm.). The southern portion of this subunit has not been surveyed since 1998 (CNDDB 2011a). Mineral-rich clay soils within grassland and other native vegetative communities (PCE 1) in this subunit provide the physical or biological features that are essential to the conservation of this species.

Subunit 1D: Ida-Leona

The Ida-Leona subunit (4.5 acres (1.8 ha)) is located about 0.5 mi (0.8 km) east of the Ida-Leona mine on land occupied by a private residence. In 1999, one year after listing, a total of 12 plants were recorded from 2 locations at an elevation of 2,223 ft (677 m) within a coastal sage scrub-nonnative grass plant association (Greene 1999, pers. comm.). Although this subunit was not known to be occupied at the time of listing in 1998, we believe it was occupied in 1998 because, as discussed in Background section, it takes at least 3 years after seed germination for this bulb-forming plant to produce flowers (Wall 2012, pers. comm.). This location was surveyed specifically for *A. munzii* by a qualified botanist in April 1999, less than 1 year after listing; 12 flowering plants were found in 2 locations (Greene 1999, pers. comm.); thus, based on its biology (growth timeframe) as described above, plants would have been present in 1998. Additionally, as discussed in the Background section, *Allium munzii* is often difficult to observe in the field (e.g., plants are dormant from mid-summer through autumn) and is easily overlooked without site-specific surveys during ideal conditions for its life history.

The populations of *A. munzii* at this location are on the north-facing slope of a hillside, range in elevation between 1,200 to 2,700 ft (366 to 823 m) AMSL, and in a small drainage (mesic microhabitat) within native (sage scrub) and nonnative (grasses) habitat. The surveyed population was reported to be approximately 600 ft (183 m) from the nearest residence. Although the owners at the time of the survey indicated that they did not intend to develop the drainage where the species was located (Greene 1999, pers. comm.), potential threats for this subunit include nonnative grasses and mowing for fire abatement. The location is mapped as Lodo rocky loam, a weathered, medium-textured soil, at 8 to 25 percent slope, consisting of a relatively even mixture of sand, silt, and clay, with rock outcrops (PCE 2) (Knecht 1971, p. 43). This subunit contains the physical or biological features essential to the conservation of this species including substrate components and conditions suitable for growth.

Subunit 1E: Northeast Alberhill

The Northeast Alberhill subunit (58 ac (23.5 ha)) is found on open grassland, upslope of previously proposed developments and clay mining operations (CNDDB 2011a, EO 16). Several colonies were mapped in surveys in 1993 and 2003, with about 3,000 plants observed in 2003 (CNDDB 2011a EO 16). This occurrence was surveyed again in April 2011 and 25–100 plants were found; however, the population may have been larger than reported as the buds were difficult to detect due to the early timing of the survey (Drennen 2011, pers. comm.). Potential threats to this subunit include nonnative grasses and road construction (CNDDB 2011a EO 16). The physical components of this location (i.e., elevation range 1,706 ft to 2,325 ft (520 to 709 m) AMSL, sloping hillside) within spaces of open grassland (microhabitat) on clay soils (PCE 1) provide the physical or biological features essential to the conservation of *Allium munzii.*

Subunit 1F: North Peak

The North Peak subunit (2.4 ac (1.0 ha)) is located at the southern end of the Gavilan Hills unit within the North Peak Conservation Bank. Several thousand *Allium munzii* plants were found in coastal sage scrub habitat in 1993 (CNDDB 2011a, EO 15). In 1995, an estimated 6,800 plants were located at the base of a north-facing slope above a drainage area (Michael Brandman Associates 1995, p. 3). A survey conducted in the spring of 2008 recorded an estimated 400 plants growing on a north-facing slope, just upslope (approximately 328 ft (100 m)) from the drainage area (Drennen 2011, pers. comm.). These physical or biological features, space and substrate for growth and local microhabitat (slope and location within a drainage area) (PCE 2), provide habitat features essential to the conservation of *A. munzii.* Nonnative grasses are considered a threat to *A. munzii* at this location; individual plants in this subunit were found to be more abundant in areas with less nonnative grasses (Drennen 2011, pers. comm.).

Unit 2: Temescal Valley

Unit 2 consists of 481 ac (195 ha) located within the geographical area occupied at the time of listing and all subunits contain the features essential to the conservation of the species. The Temescal Valley Unit is located along Interstate 15 at the base of the Gavilan Hills in western Riverside County. The Temescal Valley unit contains the Temescal Wash, which drains the Gavilan Hills region and the northeastern slope of the Santa Ana Mountains (Boyd 1983, p. 13). This unit contains unique physical geographic features, including escarpments (canyons), found along the Temescal Wash. These escarpments are formed through erosional processes and the progressive elevation of the Santa Ana Mountains; thus, they represent one of several distinct land forms within the Perris Basin, which has a complex geological history (reviewed by Dudley 1936). The so-called Alberhill clays where *Allium munzii* is found in the Temescal Valley Unit are considered one of the earliest sediments in the Perris Basin and are found on sloping surfaces of an ancient valley wall (Dudley 1936, p. 377). Threats identified for the Temescal Valley Unit include nonnative plants, urban development and related infrastructure, and grazing. Therefore, the features essential to the conservation of the species in this unit may require special management considerations or protection to minimize impacts resulting from these threats (see Special Management Considerations or Protection section above).

Within the Temescal Valley Unit, we are considering excluding all subunits contained within the Western Riverside County MSHCP planning area under section 4(b)(2) of the Act (see Exclusions section).

Subunit 2A: Sycamore Creek

The Sycamore Creek Subunit (also known as Indian Truck Trail, north and south) is 12.3 ac (5 ha) in area, and was historically associated with *Allium munzii* populations located on a terrace escarpment, within grassland habitat on clay soil overlying cobbles (Boyd 1988, p. 4; CNDDB 2011a, EO 3). This location is believed to have contained the type locality collected by Munz in 1922 (CNDDB 2011a).

This subunit previously contained CNDDB EO 8, which was extirpated when *Allium munzii* bulbs were removed from areas proposed for development of a residential complex (Sycamore Creek Project), and is now combined with EO 3 (CNDDB 2011a). A portion of the original population of *A. munzii* was preserved onsite and was placed within a conservation easement; additional clay soils were relocated to this easement area and another planning area for the purpose of restoring *A. munzii* habitat within Riversidean sage scrub habitat (Service 2001a, p. 10; Helix Environmental Planning 2010, p. 2). *Allium munzii* bulbs removed from areas proposed for development were later transplanted to three areas that are contained within this subunit. Transplantations were conducted in 2004, 2008, and 2009 with over 525 bulbs installed in the conservation areas (Helix Environmental Planning 2010, pp. 3–5). In November 2010, 310 additional bulbs were installed in four new plots bringing the transplant total to 820 bulbs for this site (Helix Environmental Planning 2010, pp. 5, 13). In the spring of 2011, 678 plants (83 percent) produced leaves, 533 (65 percent) produced flowers, and 205 (25 percent) produced seeds (Helix Environmental Planning 2011, p. 13).

The Army Corps of Engineers Clean Water Act section 404 permit conditions and conservation measures established in the Service's biological opinion for the Sycamore Creek Project (Service 2001a, p. 10) also require maintenance and monitoring of the transplant areas and restoration of Riversidean sage scrub habitat supporting *A. munzii;* these are included as part of the Habitat Mitigation and Monitoring Plan for the Sycamore Creek Specific Plan (The Planning Associates 2002). Nonnative plants represent a threat at this subunit. In 2011, invasive plant control (weeding, spot spraying) was conducted as part of required maintenance activities (Helix Environmental Planning 2011, p. 10). The subsurface geology, clay soils, and native habitat (PCE 1) within the onsite conservation areas comprise the physical or biological features essential to the conservation of *A. munzii.*

Subunit 2B: De Palma Road

The De Palma Road subunit (12.8 ac (5.2 ha)) is located about 1 mi (1.6 km) southeast of the Sycamore Creek subunit along Temescal Wash. This occurrence of *Allium munzii* is found on Altamont clay soils with 15 to 25 percent slopes within nonnative grasses and sage scrub vegetation (Dudek 2011, p. 2). Grazing, displacement by nonnative invasive plants, and development pressures have been previously described (CNDDB 2011a, EO 7) as threats to this population given its close proximity to Interstate 15. As a result of proposed grading improvements to De Palma Road and a proposed Saddleback Estates residential development, a salvage and relocation operation was implemented in December 2007 for locations of *A. munzii* to be impacted by the grading footprint of the project (Dudek 2011, p. v). The proposed conservation area (containing three separate preserves) was designed to encompass most of the existing *A. munzii* plants, while individual plants outside the preserve areas were translocated onto a portion of

the preserve not known to support this taxon (Dudek 2011, p. 2). Subsequent to translocation, a maintenance and monitoring program was initiated. The 2010 survey found a total of 1,195 flowering individuals within the translocation area, and maintenance activities were conducted including weed and rodent control (Dudek 2011, pp. v–vi). A conservation easement was to be placed over the proposed preserve areas; however, the proposed development did not go forward and Riverside County is currently managing the area until the disposition of the parcel is finalized.

This subunit includes Altamont clay soils within the terrace escarpments on the west side of Temescal Wash. This physiographic setting containing the substrate components (Altamont clay soils) and suitable conditions (vegetation and microhabitat) (PCE 1) for the growth of *Allium munzii* provides the physical or biological features essential to the conservation of this species.

Subunit 2C: Alberhill Mountain

The Alberhill Mountain subunit is 300.5 ac (121.6 ha) of private land. *Allium munzii* occurs on clay soils in coastal sage scrub vegetation on the south slope directly adjacent to open pit clay mines (CNDDB 2011a, EO 6). Extensive mining of clay in the early 1980s resulted in the loss of two locations of plants (CNDDB 2011a), and Boyd (Boyd 1988, p. 2) speculated that the plant population in this area was once much larger. Surveys conducted by Western Riverside County RCA in 2008 recorded 9 localities ranging from 10 to 150 plants (Drennen 2011, pers. comm.). Threats to this subunit include a planned electrical subtransmission line and related infrastructure (power poles, equipment, construction impacts) (State of California Public Utilities Commission 2010). Potential impacts will vary depending on the exact route selected (AMEC Earth and Environmental Inc. 2006a, p. 2).

This subunit contains Altamont clay soils (PCE 1) necessary for the growth of *Allium munzii.* The minerals and unique properties of this clay soil provide the physical or biological features essential to the conservation of the species.

Although this subunit was not known to be occupied at the time of listing in 1998, we believe it was occupied in 1998 because, as discussed in Background section, it takes at least 3 years after seed germination for this bulb-forming plant to produce flowers (Wall 2012, pers. comm.). This location was surveyed specifically for *A. munzii* by a qualified botanist in April 1999, less than 1 year after listing; 12 flowering plants were found in 2 locations (Greene 1999, pers. comm.); thus, based on its biology (growth timeframe) as described above, plants would have been present in 1998. Additionally, as discussed in the Background section, *Allium munzii* is often difficult to observe in the field (e.g., plants are dormant from mid-summer through autumn) and is easily overlooked without site-specific surveys during ideal conditions for its life history.

Subunit 2D: Alberhill Creek

The Alberhill Creek (Alberhill Marsh) subunit (155.3 ac (62.8 ha)) is located on private land in a grassland (native and nonnative) community on a low hill adjacent to a channel of the Temescal Wash (CNDDB 2011a, EO 18). The CNDDB EO was discovered on clay soils in 2000; however, we believe it was occupied at the time of listing given: (1) The proximity and identical clay soil association with the larger Subunit 2C, which is located less than 1 mi (1.6 km) to the northwest, and (2) as discussed in the Background section, this bulb-forming plant requires at least 3 years to produce flowers from seed. Thus, for flowering plants to be observed 2 years after listing, we believe that plants in the form of bulbs were present in this subunit at the time of listing. In addition, all of the lands within this subunit are located on the clay soils to which this species is restricted in western Riverside County. As described above (Subunit 2C), a segment of an electrical subtransmission line is proposed for this location. Other threats to this subunit have not been documented, but its proximity to Interstate 15 and associated development indicates some degree of threat from urbanization and nonnative grasses.

Subunit 2D is part of the same terrace formation as the Alberhill Mountain subunit, and contains the mineral-rich clay soils, subsurface geology and surface hydrology, and topography components (PCE 1) that provide the physical or biological features essential to the conservation of this species.

Unit 3: Elsinore Peak

Unit 3 consists of 98.4 ac (39.8 ha). This unit location is unchanged from our previous proposed critical habitat rule (69 FR 31569; June 4, 2004) and was occupied at the time of listing; however, we have redefined the boundary of this unit to better match the underlying clay soils and plant populations observed since the final rule (70 FR 33015; June 7, 2005). About two-thirds (63.1 ac (25.5 ha)) of the Elsinore Peak unit is contained within the Cleveland National Forest, and 35.3 ac (14.3 ha) is under State of California (State Lands Commission) ownership within the Western Riverside County MSHCP Conservation Area. The unit was surveyed by Western Riverside RCA in 2005 and 2008 (Drennen 2011, pers. comm.) and more comprehensively by Boyd in 2010 (Boyd 2011c, pers. comm.).

The Elsinore Peak unit represents the southwesternmost extent of the range of *Allium munzii.* Many of the occurrences found on the Cleveland National Forest within this unit are considered to be the least disturbed and the highest recorded elevation (3,300 to 3,500 ft (1 to 1.07 km)) for this species (Boyd and Mistretta 1991, p. 3). The plant populations within this unit are also unusual in that they are found on cobble deposits with thinner Bosanko clay soils (PCE 2) (Boyd and Mistretta 1991, p. 3). In 1991, Boyd and Mistretta (1991, p. 2) reported three stands of *A. munzii* at Elsinore Peak of more than 1,000 individual plants, with the largest an estimated 5,000 plants. Nine localities were observed in a 2008 survey, with populations ranging from 5 to 100 plants (Drennen 2011, pers. comm.). A 2010 survey at Elsinore Peak was conducted by Boyd with approximately 23 general point localities recorded on both U.S. Forest Service (USFS) and State lands (Boyd 2011c, pers. comm.). The subsurface and surface elements that define this subunit, including clay soils, sloping hillsides, and microhabitats, provide the physical or biological features essential to the conservation of *A. munzii.*

Several threats to *Allium munzii* populations within this unit were identified at the time of listing, including road grading, ORV activity, and nonnative annual grasses; recreational activity and invasive species were identified as the two main threats to occurrences on USFS land in the 2005 Final Environmental Impact Statement prepared for the Cleveland National Forest Land Management Plan (USFS 2005, p. 160). A species management guide for *A. munzii* was prepared in 1992 that identified a number of management actions to help alleviate these threats, including construction of fencing and barriers to protect populations from ORV activity (Winter 1992, p. 10). Fencing, including a gate, was installed to protect plant populations, and boulders were placed along the roadway leading to Elsinore Peak to restrict ORV activity and other traffic (hikers and mountain bikers) in

sensitive areas. This has reduced the level of impact from these threats to the population of *A. munzii* plants located on USFS land in this unit (Thomas 2011, pers. comm.).

Unit 4: South Perris and Bachelor Mountain

Unit 4 consists of 186.8 ac (75.6 ha) and is defined by occurrences of *Allium munzii* found in the southern end of the Perris Basin, including Bachelor Mountain north of Lake Skinner. We are proposing three subunits within this unit based on their general proximity to one another in southwestern Riverside County. All subunits within this unit are within the geographical area occupied at the time of listing and occupy clay soils at elevations ranging from 1,420 to 2,300 ft (432 to 701 m) AMSL (Ellstrand 1996, p. 4; CNDDB 2011a, EOs 4, 11, 12, and 14) and contain the physical or biological features that are essential to the conservation of the species and may require special management considerations or protection to minimize impacts from threats described below for each subunit.

We are considering excluding subunits of the South Perris and Bachelor Mountain Unit that are within the planning areas of the Western Riverside County MSHCP, the Rancho Bella Vista HCP, or the Southwestern Riverside County Multi-species Reserve from the final designation of *Allium munzii* critical habitat under section 4(b)(2) of the Act (see Exclusions section).

Subunit 4A: Scott Road

The Scott Road subunit (32.6 ac (13.2 ha)) is in the Paloma Valley of the South Perris Basin, between Sun City and Murrieta, east of Interstate 215 at an elevation of about 1,500 ft (457 m) AMSL. The habitat for this occurrence was described in 1992 as a low knoll in rocky clay soil within native grassland and patches of coastal sage scrub (CNDDB 2011a, EO 14). This occurrence (also called McElhinney-Stimmel) was surveyed in 2008 and 2011 by Western Riverside RCA with five localities reported in 2008 and one in 2011 (Drennen 2011, pers. comm.). In 2008, *Allium munzii* was observed growing in openings of dense stands of invasive grass (*Avena* sp.) alongside native grassland and coastal sage scrub (Drennen 2011, pers. comm.). Nonnative plants are considered a potential threat to this subunit. This subunit contains the physical or biological features essential to the conservation of *A. munzii* including clay soils and open patches of native habitat at the appropriate elevation range (PCE 1) that provide substrate and conditions suitable for growth of this species.

The subunit is currently located partially on land purchased by the Western Riverside County RCA as a result of a conservation measure for a subdivision development (Service 2002, p. 2) and partially within an off-site preservation area resulting from a gas pipeline project (Service 2001b, p. 35).

Subunit 4B: Skunk Hollow

The Skunk Hollow Subunit is 74.8 ac (30.3 ha) and is located east of Murrieta Hot Springs at the southern end of the Perris Basin, just south of Tucalota Creek. This occurrence is located on north-facing slopes with clay soils, within grassy openings in coastal sage scrub (CNDDB 2011a, EO 4) at approximately 1,420 ft (433 m) AMSL (PCE 1). These substrate conditions, suitable for growth and development, comprise the physical or biological features essential to the conservation of this species.

A 1995 survey recorded a population of about 250 plants prior to the construction of an adjacent residential development (McCollum Associates *et al.* 1995, p. 21). The area occupied by *Allium munzii* is currently conserved, with long-term management provided under the Rancho Bella Vista HCP within a conservation area (Service 2000, pp. 4, 36).

Subunit 4C: Bachelor Mountain

The Bachelor Mountain subunit (79.3 ac (32.1 ha)) consists of three occurrences (EOs 11, 12, and proposed EO 24) of *Allium munzii* located north of Lake Skinner, which includes two occurrences known at the time of listing and one occurrence not known at listing (and not yet assigned an EO number by CNDDB) but described in surveys conducted prior to listing that were not known to the Service at the time of listing (69 plants in 1994 and 835 plants in 1995) (Ellstrand 1994, pp. 3–4; Ellstrand 1996, pp. 3–4). Therefore, all of Subunit 4C is within the geographical area occupied at the time of listing. The three occurrences are located on clay soils ranging in elevation from 1,476 to 2292 ft (450 to 699 m) AMSL, on sloping hills that, collectively, represent one of several distinct physio-geographic features found in the Perris Basin. Surveys in the southern part of this subunit were conducted in 2008 and 2010. Plants were found primarily on north-facing slopes in both native and nonnative grassland communities (Drennen 2011, pers. comm.). Threats to this subunit include thatch build-up from herbaceous plants including *Avena* spp. and *Brassica* spp. (CNDDB 2011a EO 11). The substrate components and mineral-rich soils, conditions suitable for the growth of *A. munzii* (PCE 1), comprise the physical or biological features essential to the conservation of this species.

All three of the CNDDB EOs located within this subunit are within the Southwestern Riverside County Multiple Species Reserve (Reserve), a Public/Quasi Public land designation of the Western Riverside County MSHCP, managed by Riverside County Parks. The Reserve encompasses coastal sage scrub, chaparral, grassland, oak woodland, and riparian forest vegetative communities between Lake Skinner and Diamond Valley Lake (Monroe *et al.* 1992, p. ES–5).

Unit 5: North Domenigoni Hills

Unit 5 consists of 8.2 ac (3.3 ha) and is occupied by *Allium munzii* north of Diamond Valley Lake, in the southeastern corner of the Perris Basin. This population is located on rocky loam soils on the northeast-facing slope of a large prominent peak (2,160 ft (658 m)) of igneous rocks (CNDDB 2011a, EO 10). Previously described threats for this unit (CNDDB 2011a) include mining activities (the 1991 mapped populations were located adjacent to an old quarry). The most recent survey result for this occurrence is from 2008, which described the populations of *A. munzii* as ''locally uncommon'' in openings of coastal sage scrub (Drennan 2011, pers. comm.). The underlying geology, soils, and elevation (PCE 2) provide elements suitable for the growth of *A. munzii* and physical or biological features essential to the conservation of this species. These features may require special management considerations or protection to minimize impacts resulting from potential threats such as invasive nonnative species.

The North Domenigoni Hills Unit occurs within the planning area of the Southwestern Riverside County Multi-species Reserve and is managed by Riverside County Parks. We are considering excluding this unit under section 4(b)(2) of the Act (see Exclusions section).

Atriplex coronata var. notatior

We are proposing three units as critical habitat for *Atriplex coronata* var. *notatior.* The areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for *A. c.* var. *notatior.* The units we propose as critical habitat are: (1) San Jacinto River (Unit 1), (2) Upper Salt Creek (Unit 2), and (3) Alberhill Creek (Unit 3). The approximate area of

proposed revised critical habitat and land ownership within these units is shown in Table 2 below.

TABLE 2. Proposed revised critical habitat for *Atriplex coronata* var. *notatior*. [Area estimates reflect all land within critical habitat boundaries.]

Unit	Ownership			Total Area
	State Land	Local Land[1]	Private Land	
1. San Jacinto River	2,426 ac (982 ha)	517 ac (209 ha)	4,096 (1,658 ha)	7,039 ac (2,849 ha)
2. Upper Salt Creek	--	271 ac (110 ha)	603 ac (244 ha)	874 ac (354 ha)
3. Alberhill Creek	--	74 ac (30 ha)	33 ac (13 ha)	107 ac (43 ha)
Total	**2,426 ac (982 ha)**	**862 ac (349 ha)**	**4,732 ac (1,915 ha)**	**8,020 ac (3,246 ha)**

[1] Areas identified as "Right-of-Way" in the most current parcel database available from the Riverside County Assessor's Office were classified as Local Land if they were located adjacent to local roadways and State Land if they were located adjacent to Federal highways under State control.

Note: Area sizes may not sum due to rounding.

Unit 1: San Jacinto River

Unit 1 includes the locations of *Atriplex coronata* var. *notatior* within the floodplain of the San Jacinto River at the San Jacinto Wildlife Area (including Mystic Lake) and the floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir, which total 7,039 ac (2,849 ha). Of this total, 4,096 ac (1,658 ha) are privately owned and 2,396 ac (970 ha) are owned by CDFG as part of the San Jacinto Wildlife Area, which is managed primarily for the purpose of waterfowl conservation. The remaining is other State or local land as shown in Table 2.

The hydrological conditions of this unit are defined by precipitation events resulting from winter storms, summer storms, and local thunderstorms, with major flood events for the San Jacinto River occurring almost exclusively during winter storms (Bryant 1975, pp. 13, 15; Tetra Tech and WRIME 2007, pp. 30–31; Riverside County Flood Control and Water Conservation District History 2011). Runoff flows into Mystic Lake from the valley and, during large flow events, from the upper San Jacinto River (Tetra Tech and WRIME 2007, p. 28). Overland flows across active agricultural lands into Mystic Lake can transport sediments containing nutrients into the lake; this has increased in recent years as smaller flow events have caused failure of the Diversion Channel levees and flooding of agricultural lands in the San Jacinto Gap region (Tetra Tech and WRIME 2007, Appendix A, p. 1). During extreme rainfall events the storage capacity of the lake can be exceeded, causing overflow back into the San Jacinto River and subsequent transport of nutrient-laden water into the floodplain of the river (Tetra Tech and WRIME 2007, p. 28). Proposed water quality projects in this portion of the San Jacinto River are being considered in an effort to convey water directly to Mystic Lake to help reduce the nutrient loading during certain storm events (Tetra Tech and WRIME 2007, p. F–97) into the San Jacinto River and the surrounding floodplain habitat where *Atriplex coronata* var. *notatior* occurs.

The *Atriplex coronata* var. *notatior* localities (locations of plants) that occupy the northern portion of the San Jacinto Unit (San Jacinto Wildlife Area including Mystic Lake) are primarily found within alkali sink habitat, including alkali grassland and scrub (Bramlet 1996, p. 10). This native habitat is threatened by reduced water quality, invasive and weedy plant species introduced as food sources for waterfowl, and alteration of habitat for duck ponds (Roberts and McMillan 1997, p. 2). This upper portion of the unit is within the geographical area occupied at the time of listing, and the physical or biological features essential to the conservation of the taxon may require special management considerations or protection to minimize impacts from the threats listed above. The most recent survey results for *A. c.* var. *notatior* in the northern portion of the unit, from 2007 to 2010, identified 6 point locations ranging from 1 to 60 individual plants (Western Riverside County RCA 2007, 2008, 2009, 2011; Malisch 2010, pers. comm.).

Downstream from Mystic Lake, the San Jacinto River forms a wide fluvial plain. This floodplain is often dry due to groundwater infiltration enhanced by low groundwater levels from excessive pumping and limited recharge (Tetra Tech and WRIME 2007, p. 28), which alter the seasonal flooding cycle. The lower portion of this unit, the floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir, is also within the geographical area occupied at the time of listing. This portion of the San Jacinto floodplain (soils and hydrologic conditions) provide the features that are essential to the conservation of the taxon and may require special management considerations and protection to minimize impacts from threats including activities identified at the time of listing (invasive weedy plant

species and nonagriculture-related clearing, agricultural activity) (Bramlet 1996, p. 14, Roberts and McMillan 1997, p. 3–4; White 2009, pers. comm.; Roberts 2010b, pers. comm.). Much of the area has been converted to agriculture or impacted by the addition of soil amendments (primarily manure dumping), which alters the alkaline properties of the soil and creates conditions that increase competition from other plants, including nonnative plants such as *Brassica nigra* (black mustard) and *Salsola tragus* (Russian thistle) (Roberts 2010a, pers. comm.). There are also indications that sheep grazing has affected *A. c.* var. *notatior* habitat in the Ramona Expressway to Railroad Canyon portion of this unit (CNDDB 2011b, EO 7).

The localities of *Atriplex coronata* var. *notatior* found within the San Jacinto Unit (including the San Jacinto Wildlife Area) depend upon the San Jacinto River for supporting hydrological conditions as described above. Seasonal ponding or flooding within the floodplain of the river inundates the alkali sink habitat, and creates a slow-moving flow of water that provides appropriate hydrological growth and survival conditions and allows for seed dispersal (PCE 1 and 2). These elements provide the physical or biological features that are essential to the conservation of *A. c.* var. *notatior.*

Within the San Jacinto River Unit, we are considering excluding lands contained within the Western Riverside County MSHCP planning area under section 4(b)(2) of the Act (see Exclusions section).

Unit 2: Upper Salt Creek

Unit 2 includes the Upper Salt Creek localities of *Atriplex coronata* var. *notatior* and comprises 874 ac (354 ha), 603 ac (244 ha) of which is privately owned and 271 ac (110 ha) is local land. This unit is within the geographical area occupied at the time of listing and is located in a natural depression within the old Salt Creek tributary within the Salt Creek watershed. Salt Creek, which drains westward toward Winchester, rejoins the San Jacinto River at Railroad Canyon and represents one of the major tributaries to Canyon Lake (Tetra Tech and WRIME 2007, p. 29). Historically, winter storm events created surface runoff producing intense peak flow events and scouring along the water supply channel; this can be seen in historical aerial photos (such as April 1980 following severe flood events in February 1980). Currently, rainfall collects within pools on slow-drainage alkaline soils, which contain remnants of an alkali vernal floodplain complex with similarly adapted plants and wildlife. Much of the area is still subject to flooding during modest flood events (RECON 1995, p. 34). The Upper Salt Creek Unit is bisected north to south by the San Diego Aqueduct Canal and currently includes open fields and cow pastures within the remaining alkaline vernal pool, alkaline grassland, and alkali sink scrub habitats (RECON 1995, pp. 15, 17; CNDDB 2011b, EO 9). Additionally, historical drainage patterns in the Upper Salt Creek Unit are disrupted by local roads, road ditches, and agricultural drainage ditches that reduce the degree and duration of ponding during the wet season (RECON 1995, p. 18).

Atriplex coronata var. *notatior* habitat within the Upper Salt Creek Unit is threatened by agricultural activities, including dryland farming, sheep grazing, invasion of nonnative plant species, alteration of hydrology, fragmentation, and fire management practices (Bramlet 1992, pers. comm.; Roberts 2005, pers. comm.; Roberts and McMillan 1997, p. 4–5; CH2M Hill 2010, Appendix B pp. 2–4; CNDDB 2011b, EOs 9 and 10). A proposed right-of-way for the realignment of State Route 79 is located just outside the boundaries of this unit (Riverside County Transportation Commission 2011).

Surveys conducted prior to listing include a 1995 report on the distribution of wetlands and sensitive species within a large (1,400 ac (567 ha)) portion of the Upper Salt Creek drainage system, which summarized existing records, aerial photography, and direct observations (RECON 1995). Approximately 33 localities of *Atriplex coronata* var. *notatior* were reported ranging from less than 100 to approximately 9,000 for a total of approximately 31,400 plants (RECON 1995, p. 25, Figure 6). As an illustration of the variability in observed individual plants in this location, a final report for focused surveys within 45 ac (18.21 ha) of mitigation land (Metropolitan Water District of Southern California) located within the Upper Salt Creek floodplain indicated a range of 16,500 individuals of *A. c.* var. *notatior* in 1996 and an estimated 136,948 individuals in 2001, with an aerial extent ranging from 9.7 acres (3.93 ha) to 12.66 ac (5.12 ha) during the same time period (AMEC Earth and Environmental Inc. 2001, p. 3).

Comprehensive sensitive plant surveys related to this proposed project were also conducted in the Upper Salt Creek area in 2005 and 2006 with over 100,000 individual *Atriplex coronata* var. *notatior* plants recorded within 555 localities within this unit (CH2M Hill 2010, p. 5–59). A less comprehensive survey in May 2009 recorded approximately 246 individual plants in four locations within this unit (Malisch 2010, pers. comm.).

This unit contains the physical or biological features essential to the conservation of *Atriplex coronata* var. *notatior* including Willows-Traver-Chino soils, alkali grassland and alkaline playa habitats, and periodic ponding or flooding (PCE 1 and 2), which provide substrate and conditions suitable for growth of this taxon. These physical or biological features may require special management considerations or protection to minimize impacts resulting from the threats as defined above.

Within the Upper Salt Creek Unit, we are considering excluding lands contained within the Western Riverside County MSHCP planning area under section 4(b)(2) of the Act (see Exclusions section).

Unit 3: Alberhill Creek

The Alberhill Creek Unit comprises 107 ac (43 ha), of which 33 ac (13.5 ha) are privately owned and 74 ac (30 ha) under local land ownership (see Table 4). The unit occurs within the floodplain of Alberhill Creek within an alkali playa that is dependent on the creek for its hydrology and seasonal flooding. Alberhill Creek is part of the larger Temescal Wash region of western Riverside County, which drains the Gavilan Hills region and the northeastern slope of the Santa Ana Mountains (Boyd 1983, p. 13). This floodplain is subject to periodic flooding, which produces ponding and scouring (as observed in aerial photos from 1980 and 2010), including seasonal overflow of water from Lake Elsinore. These hydrologic elements, along with Willows-Travers-Chino soils and alkali floodplain habitat in Alberhill Creek (PCE 1 and 2), comprise the physical or biological features that are essential to the conservation of *Atriplex coronata* var. *notatior.*

Two locations of *Atriplex coronata* var. *notatior* are known to exist in this unit (AMEC Earth and Environmental 2006b, p. 26; CNDDB 2011b, EO16). The locality at the Nichols Road wetland (near the mouth of Walker Canyon), which contains alkali marsh and alkali playa habitat on Willows soils, consisted of 185 plants in 1987 (CNDDB 2011b, EO 16). The second locality of *A. c.* var. *notatior,* also on Willows soils, comprises nonnative grassland and alkali marsh habitat where 10 plants were discovered in 2006 adjacent to Baker Road, just south of Nichols Road

(AMEC Earth and Environmental Inc. 2006b, p. 29). The Alberhill Creek Unit is located in an increasingly urbanized area and is subject to the threat of human-caused disturbance, including impacts related to a proposed subtransmission line associated with a recently completed electrical power substation (State of California Public Utilities Commission 2007; State of California Public Utilities Commission 2010).

As noted above (see Background section—Spatial Distribution, Historical Range, and Population Size), there is significant natural variability in numbers of observed individuals of *Atriplex coronata* var. *notatior* in response to annual rainfall, extent and distribution of flooding, and temperature. Differences in survey methodologies and proportion of range surveyed may also contribute to differences in annual counts of individuals and therefore reporting of locations of *A. c.* var. *notatior;* however, both locations of *A. c.* var. *notatior* within this subunit are found on the Willows soils of the Temescal floodplain and are within one-quarter mile (365 meters) of each other. All of Unit 3 is therefore within the geographical area occupied at the time of listing, and the unit provides the physical or biological features that are essential to the conservation of this taxon and may require special management considerations and protection.

Within the Alberhill Creek Unit, we are considering excluding lands contained within the Western Riverside County MSHCP planning area under section 4(b)(2) of the Act (see Exclusions section).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service* et al., 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior.* As discussed above, the role of critical habitat is to support life-history needs of these taxa and provide for the conservation of these taxa.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for *Allium munzii* and *Atriplex coronata* var. *notatior.* These activities include, but are not limited to, the following for each of the taxa:

Allium munzii

Actions that alter the physical characteristics of mesic clay and rocky-sandy loamy soils (within rock outcrops) and microhabitats of these soils, or that create conditions that facilitate the spread of invasive nonnative plants, especially nonnative annual grasses, into these habitats would adversely affect the proposed critical habitat. Such activities could include (but are not limited to): Grading or disking for dryland farming, clay mining, urban and related infrastructure development, ORV activity, animal grazing, fire management, and alteration of hydrology (such as impoundment or channelization). These activities could eliminate or reduce the amount of habitat necessary to support *Allium munzii,* a narrow endemic taxon restricted to clay and rocky-sandy loamy soils within localized microhabitats.

Atriplex coronata var. *notatior*

Actions that alter the physical characteristics of alkali playa, alkali scrub, and alkali grassland habitats or fragment these areas, including reduction of water quality, alteration of the hydrology and floodplain dynamics, or an increase in the occurrence of nonnative plant species in these habitats would adversely affect the proposed critical habitat. Such activities could include (but are not limited to): urban development, manure dumping, animal grazing, grading or disking for agriculture, ORV activity, alteration of hydrology (such as impoundment or channelization), and soil chemistry. These activities could eliminate or fragment habitats that provide essential soil and hydrological characteristics to support *Atriplex coronata* var. *notatior.*

Exemptions

Application of Section 4(a)(3)(B) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands that meet the definition of critical habitat for *Allium munzii* or *Atriplex coronata* var. *notatior* and, as a result, no lands are being exempted under section 4(a)(3)(B) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal or greater conservation benefits than a critical habitat designation would provide. For example, we consider our continued ability to seek new partnerships with future plan participants, including the State, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within approved management plan areas are designated as critical habitat, there would likely be a negative effect on our existing partnerships and our ability to establish new partnerships to develop and implement these plans, particularly plans that address landscape-level conservation of species and habitats. By excluding these lands, we preserve our current partnerships, promote future partnerships, and encourage additional conservation actions in the future.

In the case of *Allium munzii* and *Atriplex coronata* var. *notatior,* the benefits of critical habitat include public awareness of *A. munzii* and *A. c.* var. *notatior* presence and the importance of habitat protection, and in cases where a Federal nexus exists,

increased habitat protection for *A. munzii* and *A. c.* var. *notatior* due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan, we consider a variety of factors, including, but not limited to, whether the plan is finalized, how it provides for the conservation of the essential physical or biological features, whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future, whether the conservation strategies in the plan are likely to be effective, and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in the proposed revised critical habitat are appropriate for exclusion from the final designation pursuant to section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

We specifically solicit comments on the inclusion or exclusion of such areas (see Public Comments section above). A detailed analysis of our consideration to exclude these lands under section 4(b)(2) of the Act is provided below under the *Exclusions Based on Other Relevant Impacts* section.

Allium munzii

We are currently considering excluding the following 790 ac (320 ha) from the critical habitat designation for *Allium munzii* under section 4(b)(2) of the Act. Table 3 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat that we intend to exclude under section 4(b)(2) of the Act from the final critical habitat rule.

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TABLE 3. Areas meeting the definition of critical habitat and areas being considered for exclusion from the critical habitat designation for *Allium munzii*.

Unit and Subunit	**Applicable Partnership or Conservation Plan**	**Areas Meeting the Definition of Critical Habitat, in Acres (Hectares)**	**Areas Being Considered for Exclusion, in Acres (Hectares)**
Unit 1. Gavilan Hills		**114.7 ac (46.4 ha)**	**114.7 ac (46.4 ha)**
1A. Estelle Mountain	Western Riverside County MSHCP	0.48 ac (0.2 ha)	0.48 ac (0.2 ha)
	Lake Mathews MSHCP	2.3 ac (0.9 ha)	2.3 ac (0.9 ha)
1B. Dawson Canyon	Western Riverside County MSHCP	4.8 ac (1.9 ha)	4.8 ac (1.9 ha)
1C. Gavilan Plateau	Western Riverside County MSHCP	42.2 ac (17.1 ha)	42.2 ac (17.1 ha)
1D. Ida-Leona	Western Riverside County MSHCP	4.5 ac (1.8 ha)	4.5 ac (1.8 ha)
1E. Northeast Alberhill	Western Riverside County MSHCP	58 ac (23.5 ha)	58 ac (23.5 ha)
1F. North Peak	Western Riverside County MSHCP	2.4 ac (1.0 ha)	2.4 ac (1.0 ha)
Unit 2. Temescal Valley		**481 ac (195 ha)**	**481 ac (195 ha)**
2A. Sycamore Creek	Western Riverside County MSHCP	12.3 ac (5.0 ha)	12.3 ac (5.0 ha)
2B. De Palma Road	Western Riverside County MSHCP	12.8 ac (5.2 ha)	12.8 ac (5.2 ha)
2C. Alberhill Mountain	Western Riverside County MSHCP	300.5 ac (121.5 ha)	300.5 ac (121.5 ha)
2D. Alberhill Creek	Western Riverside County MSHCP	155.4 ac (62.8 ha)	155.4 ac (62.8 ha)
Unit 3. Elsinore Peak		**98.4 ac (39.8 ha)**	--
Unit 4. South Perris and Bachelor Mountain		**186.8 ac (75.6 ha)**	**186.8 ac (75.6 ha)**
4A. Scott Road	Western Riverside County MSHCP	32.6 ac (13.3 ha)	32.6 ac (13.3 ha)
4B. Skunk Hollow	Rancho Bella Vista HCP	74.8 ac (30.3 ha)	74.8 ac (30.3 ha)
4C. Bachelor	Southwestern	79.3 ac	79.3 ac

Mountain	Riverside County Multi-species Reserve	(32.1 ha)	(32.1 ha)
Unit 5. North Domenigoni Hills	Southwestern Riverside County Multi-species Reserve	**8.2 ac (3.3 ha)**	**8.2 ac (3.3 ha)**
Total		**889 ac (360 ha)**	**790 ac (320 ha)**

Atriplex coronata var. *notatior*

We are considering excluding all of the following areas from the critical habitat designation for *Atriplex coronata* var. *notatior* under section 4(b)(2) of the Act. Table 4 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat that we intend to exclude under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 4. Areas meeting the definition of critical habitat and areas being considered for exclusion from the critical habitat designation for *Atriplex coronata* var. *notatior*.

Unit	Applicable Partnership or Conservation Plan	Areas Meeting the Definition of Critical Habitat, in Acres (Hectares)	Areas Being Considered for Exclusion, in Acres (Hectares)
Unit 1. San Jacinto River	Western Riverside County MSHCP	7,039 ac (2,849 ha)	7,039 ac (2,849 ha)
Unit 2. Upper Salt Creek	Western Riverside County MSHCP	874 ac (354 ha)	874 ac (354 ha)
Unit 3. Alberhill Creek	Western Riverside County MSHCP	107 ac (43 ha)	107 ac (43 ha)
Total		**8,020 ac (3,246 ha)**	**8,020 ac (3,246 ha)**

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed revised critical habitat designation and related factors.

We prepared and finalized an analysis of the economic impacts for the previous proposed critical habitat designation for *Allium munzii* (Economic & Planning Systems, Inc. 2005). Only USFS lands at Elsinore Peak within the Cleveland National Forest were proposed as critical habitat in the 2004 proposed rule (69 FR 31569; June 4, 2004). The economic analysis determined retrospective costs (costs since listing, 1998 to 2004) to the USFS of $9,938 and total prospective costs (from 2005 to 2025) of $33,849. No lands were excluded from critical habitat in our final designation based on economic impact under section 4(b)(2) of the Act (70 FR 33015; June 7, 2005).

We prepared and finalized an analysis of the economic impacts for the previous proposed critical habitat designation for *Atriplex coronata* var. *notatior* (Northwest Economic Associates 2005). Because no lands were proposed for designation of critical habitat in the previous proposed rule (69 FR 59844; October 6, 2004), we determined there was no economic impact to landowners or agencies (70 FR 59952; October 13, 2005).

The prior economic analyses for *Allium munzii* and *Atriplex coronata* var. *notatior* included costs coextensive with the listing of both plants (in other words, costs attributable to listing the species as well as costs attributable to the designation of critical habitat). Because the Act directs the Secretary to consider the economic impacts of specifying any particular area as critical habitat, we believe the appropriate framework for analysis is to compare the costs associated with actions in a world with critical habitat to those costs likely to be incurred in the absence of critical habitat designation. Our new analysis will therefore focus on the specific costs attributable to designating the areas proposed in this rule as critical habitat.

We will announce the availability of a new draft economic analysis on this proposed revised designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic

analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Carlsbad Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed revised designation of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not currently considering exercising his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

When evaluating a current land management or conservation plan (HCPs as well as other types of plans) and the habitat management or protection it provides, we consider a number of factors including, but not limited to, the following:

(1) Whether the plan is complete and provides an equivalent or higher level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) Whether there is a reasonable expectation that the conservation management strategies and actions will be implemented into the foreseeable future, based on past practices, written guidance, or regulations; and

(3) Whether the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

Portions of the proposed revised critical habitat units for *Allium munzii* and all of the proposed revised critical habitat units for *Atriplex coronata* var. *notatior* may warrant exclusion from the designation of critical habitat under section 4(b)(2) of the Act based on the partnerships, management, and protection afforded under these approved and legally operative HCPs that are equal to or more protective than the benefits provided by, critical habitat designation.

We believe that the Western Riverside County MSHCP, the Lake Mathews MSHCP, and the Rancho Bella Vista HCP described below fulfill the above criteria, and are considering excluding non-Federal lands covered by these HCPs that provide for the conservation of *Allium munzii* and *Atriplex coronata* var. *notatior.* All permittee-owned or controlled lands that fall within the boundaries of the Western Riverside County MSHCP or other HCPs described herein are being considered for exclusion (see *Other Habitat Conservation Plans* section below).

We believe that the Southwestern Riverside County Multi-species Reserve Cooperative Management Agreement also meets the criteria listed above; thus we are considering excluding non-Federal lands proposed as critical habitat for *Allium munzii* that are in the Reserve covered by this agreement (see discussion below).

In this proposed revised rule, we are seeking input from the Western Riverside County MSHCP, other HCP stakeholders (Rancho Bella Vista HCP and Lake Mathews MSHCP), the parties to the Southwestern Riverside County Multi-Species Reserve Cooperative Management Agreement, and the public (see Public Comments section) as to reasons supporting whether or not the Secretary should exercise his discretion to exclude these areas from the final critical habitat designation.

Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

The Western Riverside County MSHCP is a regional, multi-jurisdictional HCP encompassing approximately 1.26 million ac (510,000 ha) of land in western Riverside County. The Western Riverside County MSHCP is a multispecies conservation program designed to minimize and mitigate the expected loss of habitat and associated incidental take of covered species resulting from covered development activities in the plan area. The Western Riverside County MSHCP addresses 146 listed and unlisted ''covered species,'' including *Allium munzii* and *Atriplex coronata* var. *notatior,* which are further considered as ''Covered Species Adequately Conserved;'' that is, those where the species objectives are met and that are provided take authorization through the Natural Community Conservation Planning (NCCP) Permit (Dudek and Associates 2003, Section 9.2 and Table 9–3). On June 22, 2004, the Service issued a single incidental take permit under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP to be in effect for a period of 75 years (Service 2004).

The Western Riverside County MSHCP, when fully implemented, will establish approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands (ARL)) to complement the approximate 347,000 ac (140,426 ha) of preexisting natural and open space areas (Public/Quasi-Public (PQP) lands) in the plan area. These PQP lands include those under the ownership of public agencies, primarily the USFS and BLM, as well as permittee-owned or controlled open-space areas managed by the State of California and Riverside County. Collectively, the ARL and PQP lands form the overall Western Riverside County MSHCP Conservation Area. The configuration of the 153,000 ac (61,916 ha) of ARL is not mapped or precisely delineated (hard-lined) in the Western Riverside County MSHCP. Instead, the configuration and composition of the ARL are described in text within the bounds of the approximately 310,000-ac (125,453-ha) Criteria Area. The ARL lands are being acquired and conserved as part of the ongoing implementation of the Western Riverside County MSHCP.

Species-specific conservation objectives are included in the Western Riverside County MSHCP for *Allium munzii* and *Atriplex coronata* var. *notatior* and are described in detail below. Conservation objectives for *A. munzii* include:

(1) Conserve at least 21,260 ac (8,603 ha) of suitable habitat to include at least 2,070 ac (838 ha) of clay soils;

(2) Conserve at least 13 localities (populations within EOs) within the Temescal Valley and the southwestern portion of the plan area; and

(3) Conduct Narrow Endemic Plan Species surveys as discussed below (Dudek and Associates 2003, pp. 9–126–9–127).

Conservation objectives identified in the Western Riverside County MSHCP for *Atriplex coronata* var. *notatior* include:

(1) Conserve at least 6,900 ac (2,792 ha) of suitable habitat including grasslands, playas, and vernal pools;

(2) Conserve the Alberhill Creek locality and three core areas located along the San Jacinto River and in the upper Salt Creek drainage;

(3) Conduct surveys as discussed below;

(4) Conserve the floodplain along the San Jacinto River consistent with objective 1, including maintaining floodplain processes; and

(5) Conserve the floodplain along Salt Creek, generally in its existing condition, including maintaining floodplain processes (Dudek and Associates 2003, pp. 9–137–9–138).

Allium munzii

In our analysis of the effects to *Allium munzii* for the issuance of the Western Riverside County MSHCP permit, we acknowledged that specific conservation objectives would be provided in the Western Riverside County MSHCP to ensure that suitable habitat and known populations of *A. munzii* would persist (Service 2004, p. 326). To this effect, for narrow endemic species such as *A. munzii,* the Western Riverside County MSHCP states:

''The MSHCP is a Criteria-based plan, focused on preserving individual species through Conservation. Conservation is based on the particular habitat requirements of each species as well as the known distribution data for each species. The existing MSHCP database does not, however, provide the level of detail sufficient to determine the extent of the presence or distribution of Narrow Endemic Plant Species within the MSHCP Plan Area. Since Conservation planning decisions for these species will have a substantial effect on the status of these species, additional information regarding the presence of these species must be gathered during the long-term implementation of the MSHCP to ensure that appropriate Conservation of these species occurs'' (Dudek and Associates 2003, p. 6–28).

The Western Riverside County MSHCP defines *Allium munzii* as a Narrow Endemic Plant Species and requires surveys for this taxon as part of the review process for public and private projects in certain areas where one or more permittees have discretionary authority for project approval (Dudek and Associates 2003, pp. 6–28–6–29). These surveys are required where projects are proposed in suitable habitat within defined boundaries of the Criteria Area (Dudek and Associates 2003, Figure 6–1, p. 6–30). Where survey results are positive, project proposals with the potential to affect a Narrow Endemic Plant Species are subject to avoidance, minimization, and mitigation strategies (Dudek and Associates 2003, p. 6–29). In addition, the Western Riverside County MSHCP indicates that, for Narrow Endemic Plant Species populations identified as part of this survey process (including *A. munzii*), impacts to 90 percent of those portions of the property that provide for long-term conservation value for these species will be avoided until it is demonstrated that conservation objectives (discussed below) are met (Dudek and Associates 2003, p. 6–38). The information from these surveys is to be used to prioritize areas for acquisition into the Western Riverside County MSHCP (Service 2004, p. 28). Surveys conducted from 2005 through 2011 have confirmed 9 extant populations within 13 CNDDB-defined EOs (Western Riverside County RCA 2011, p. 31).

We stated in our biological opinion (analysis of effects) of the Western Riverside County MSHCP that:

(1) All 16 known localities (or CNDDB-defined EOs) would be included in the Conservation Area;

(2) We anticipated that occurrences determined to be important to the overall conservation of the species will be considered for inclusion in the Additional Reserve Lands; and

(3) At least some of the avoided areas may be maintained as open space habitat (Service 2004, p. 327).

In addition, the Western Riverside County MSHCP identified two CNDDB-defined EOs partially within the Conservation Area (EOs 2 and 9) and two that are currently located outside the Conservation Area (EOs 5 and 16) that will be added to the Conservation Area. Finally, as noted above, the Western Riverside County MSHCP provides flexibility for criteria refinement, such that if an area is currently outside the reserve design defined by the Western Riverside County MSHCP, but is later determined to be important for conservation, then it could be added to the reserve as Additional Reserve Lands or Acquisition Lands.

Atriplex coronata var. *notatior*

Surveys are also required for *Atriplex coronata* var. *notatior* in conjunction with the Western Riverside County MSHCP implementation in order to meet the permit issuance criteria for the HCP (Dudek and Associates 2003, p. 6–63). For *A. c.* var. *notatior,* surveys are required within defined boundaries of the Criteria Area (Dudek and Associates 2003, Figure 6–2, p. 6–64). As with Narrow Endemic Plant Species, in locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the identified species will be avoided until the species-specific conservation objectives for these species are met (Dudek and Associates 2003, p. 6–65). We stated in our analysis of the effects of the Western Riverside County MSHCP that it provides the flexibility to include those locations that contain large numbers of individuals or are determined to be important to the conservation of *A. c.* var. *notatior* in the Additional Reserve Lands (Dudek and Associates 2003, p. 6–70; Service 2004, p. 353).

Under the Western Riverside County MSHCP, surveys for *Atriplex coronata* var. *notatior* are required every 8 years to verify occupancy for at least 75 percent of known locations. If a decline in distribution below this threshold is observed, management activities are triggered, as appropriate, to meet the species-specific objectives identified in the plan (Dudek and Associates 2003, Table 9.2; Service 2004, p. 355). Surveys conducted by the Western Riverside County RCA from 2006 to 2010 confirmed 2 of 4 CNDDB-defined EOs within the three critical habitat units (Units 1, 2, and 3) (Western Riverside County RCA 2011, p. 33).

The Western Riverside County MSHCP provides a comprehensive habitat-based approach to the protection of covered species, including *Allium munzii* and *Atriplex coronata* var. *notatior,* by focusing on lands essential for the long-term conservation of the covered species and appropriate management of those lands (Western Riverside County Regional Conservation Authority *et al.* 2003, p. 51).

The Secretary is considering exercising his discretion to exclude 626 ac (253 ha) that meet the definition of critical habitat for *Allium munzii* in Units 1 through 5, and 8,020 ac (3,246 ha) that meet the definition of critical habitat for *Atriplex coronata* var. *notatior* in Units 1 through 3. The lands being considered for exclusion are permittee-owned or -controlled lands within the Western Riverside County MSHCP.

In the 1998 final listing rule for *Allium munzii* and *Atriplex coronata* var. *notatior,* the present or threatened destruction, modification, or curtailment of its habitat or range including urban development, agriculture, and clay mining for *A.*

munzii, and agriculture, urban development, alteration of hydrology for *A. c* var. *notatior,* were identified as the primary threats to these taxa (63 FR 54982; October 13, 1998). The Western Riverside County MSHCP helps to address these threats to *A. munzii* and *A. c.* var. *notatior* (Service 2008; Service 2009) through a regional planning effort, and outlines species-specific objectives and criteria for the conservation of these taxa (Dudek and Associates 2003, pp. 9–126–9–127; pp. 9–137–9–138). We are considering excluding areas covered by the Western Riverside County MSHCP based on the protections provided through our partnerships, to the extent consistent with the requirements of section 4(b)(2) of the Act. We encourage any public comment regarding our consideration to exclude these areas in the final critical habitat designation (see Public Comments section above).

Other Habitat Conservation Plans

Some units and subunits proposed as critical habitat for *Allium munzii* are within smaller, individual HCPs that were approved prior to the Western Riverside County MSHCP. These include the Lake Mathews MSHCP (part of Subunit 1A) and the Rancho Bella Vista HCP (Subunit 4B). In addition, parts of Subunit 4C and Unit 5 are contained within the Southwestern Riverside County Multi-species Reserve. These lands are within the boundaries of the Western Riverside County MSHCP but their conservation and management actions are authorized through separate section 10(a)(1)(B) permits or section 7(b)(4) and section 7(o)(2) of the Act.

Lake Mathews Multiple Species Habitat Conservation Plan (Lake Mathews MSHCP)

The Lake Mathews MSHCP established a 2,544-ac (1,029-ha) mitigation bank adjacent to the existing 2,565-ac (1,038-ha) State Ecological Reserve (Service 2004, p. 60). These lands, encompassing over 12,000 ac (4,856 ha), all contribute to the establishment of a reserve for multiple species, including *Allium munzii,* in western Riverside County. The reserve encompasses over 12,000 ac (4,856 ha) and consists of the State Ecological Reserve and the Lake Mathews HCP Mitigation Bank, Lake Mathews/Estelle Mountain Core Stephens' Kangaroo Rat Reserve, the Estelle Mountain Ecological Reserve owned by CDFG, and land owned by BLM within the Riverside County Habitat Conservation Agency's Stephens' Kangaroo Rat Core Reserve (Service 2004, p. 60). Collectively, these lands comprise the Lake Mathews/Estelle Mountain Existing Core ''C'' area of the Western Riverside County MSHCP. We are considering excluding 2.3 ac (approximately 1 ha) of Subunit 1A located within the Lake Mathews MSHCP.

The Riverside County Habitat Conservation Agency manages the Lake Mathews/Estelle Mountain Reserve. The Service is an active partner with this agency and has developed and is implementing Partners for Fish and Wildlife Program projects within this reserve, primarily to control and manage nonnative plants.

Rancho Bella Vista Habitat Conservation Plan (Rancho Bella Vista HCP)

The Rancho Bella Vista HCP boundary occurs within the Western Riverside County MSHCP area boundary and contains Subunit 4B (74.8 ac (30.3 ha)). The section 10(a)(1)(B) permit associated with the Rancho Bella Vista HCP authorized Pacific Bay Properties to develop the 798-ac (323-ha) site that included 102.3 ac (41.4 ha) of habitat (Service 2004, p. 66). The Rancho Bella Vista HCP conservation actions relevant to *Allium munzii* habitat include preserving 86 ac (35 ha) of Riversidean sage scrub and 28.8 ac (11.6 ha) of disturbed Riversidean sage scrub, 6.2 ac (2.5 ha) of riparian and wetland habitats, and 41 ac (16.6 ha) of nonnative grassland (Service 2004, p. 67).

Long-term management of the Rancho Bella Vista HCP conservation lands includes the following types of activities:

(1) Control access and, where necessary, limit access by people, vehicles, and domestic pets to conserved habitats and preclude access to highly sensitive resources;

(2) Monitor target species, including *Allium munzii,* and provide species management of all covered species;

(3) Identify and rank, in order of priority, opportunities for habitat restoration and enhancement within the conserved habitats;

(4) Monitor conserved lands for the occurrence of alien invasive plants and animals and provide the prompt control of such species;

(5) Map the locations of nonnative plant species within and immediately adjacent to conserved habitats and schedule for removal, monitoring, or control as necessary;

(6) Develop a fire management program in consultation with the County of Riverside Fire Marshal and wildlife agencies to minimize impacts to conserved habitats from fire management programs and adjacent land uses; and

(7) Develop public information materials and programs including:

(a) A brochure that describes the natural resources, areas of special interest, and prohibited activities within conserved habitats;

(b) A landscape and fuel break planning brochure for homeowners and homeowner associations located adjacent to conserved habitats; and

(c) Nature trails along or through portions of conserved habitats (provided impacts are avoided or mitigated) (Service 2000, p. 4–5).

Southwestern Riverside County Multi-species Reserve

Subunit 4C (79.3 ac (32.1 ha)) and Unit 5 (8.2 ac (3.3 ha)) are contained within the Southwestern Riverside County Multi-species Reserve (Reserve). This Reserve was created in 1992, prior to the listing of *Allium munzii,* as a mitigation measure for impacts resulting from the Diamond Valley Lake Reservoir. The Reserve comprises about 13,000 ac (5,261 ha), approximately 9,400 ac (3,804 ha) of which are owned by the Metropolitan Water District, 2,500 ac (1,012 ha) by the Riverside County Habitat Conservation Agency, 360 ac (146 ha) by BLM, and 600 ac (243 ha) by the Riverside County Parks and Open Space District (Service 2004, p.61), which manages the reserve. The Southwestern Riverside County Multi-species Reserve is largely located within the area north of Lake Skinner and south of Diamond Valley Lake and includes the Domenigoni Mountains and South Hills (Service 2004, p. 61).

The Southwestern Riverside County Multi-species Reserve is managed through a Cooperative Management Agreement; the Service is a party to this agreement and a member of the five-member committee that makes management decisions (Monroe *et al.* 1992, Appendix B). Management strategies defined for the entire Reserve include:

(1) Protection of habitat from human disturbance through fencing, construction of fire breaks, and patrols to prevent unauthorized access;

(2) Activities to promote the recovery of native plant and animal communities by managing fire and controlling grazing; and

(3) Management for biodiversity including maintaining a mosaic of different-aged habitats to meet the needs of many species (Monroe 1992, pp. ES–5–ES–6).

The 2008 Multi-species Reserve Management Plan (Moen 2008, Appendix 10) identifies enhancement and monitoring goals, objectives, and strategies for *Allium munzii.* These

include: (1) Estimating area occupied by *A. munzii* within the reserve by mapping each occupied area annually, (2) estimating individual plants within the known populations, and (3) enhancing habitat suitability within occupied areas by annually removing thatch and biomass from nonnative vegetation and determining the efficacy of each treatment (Moen 2008, Appendix 10, pp. 1–2).

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed revised designation of critical habitat.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (Regulatory Planning and Review). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the new draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This new draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the new draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

We have concluded that deferring the RFA finding until completion of the new draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The construction of an electrical subtransmission line and substation project (Southern California Edison Valley-Ivyglen Subtransmission Line and Fogarty Substation) is underway in the greater Perris basin (Worthy 2011, pers. comm.). However, we do not expect the designation of this proposed revised critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* to significantly affect this project based on the components described in the Mitigation and Monitoring Plan for this project, which include siting permanent project elements (i.e., roads and poles) away from known locations of special-status species and communities, identifying environmentally sensitive areas such as rare plant populations, monitoring of known locations of special-status plant populations prior to or during the construction period, to include monitoring during construction and for 1 year following construction to assess the effectiveness of protection measures, and limiting removal of native vegetation communities (State of California Public Utilities Commission 2010, pp. 6–2–6–4). The project is being constructed by Southern California Edison, which is a Participating Special Entity (or PSE) under the Western Riverside County MSHCP, and which has agreed to consult with CDFG, the Service, and the Western Riverside County RCA and follow the provisions set forth in the Western Riverside County MSHCP if direct or indirect impacts to special-status plants cannot be avoided (State of California Public Utilities Commission 2010, p. 6–5). Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal

mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments. Small governments would be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions would not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Due to current public knowledge of the species' protections under the Act both within and outside of the proposed areas, we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the new economic analysis for this proposed revised rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Allium munzii* or *Atriplex coronata* var. *notatior* may impose nominal additional regulatory restrictions to those currently in place and, therefore, is likely to have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of *Allium munzii* and *Atriplex coronata* var. *notatior* within the designated areas to assist the public in understanding the habitat needs of these taxa.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).]

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We determined that there are no tribal lands within the geographical area occupied by *Allium munzii* or *Atriplex coronata* var. *notatior* at the time of listing that contain the features essential to the conservation of these taxa, and no tribal lands outside the geographical area occupied by *A. munzii* or *A. c.* var. *notatior* at the time of listing that are essential for the conservation of these taxa. Therefore, we are not proposing to designate critical habitat for *A. munzii* and *A. c.* var. *notatior* on tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by revising the entry for ''*Allium munzii* (Munz's onion)'' under Flowering Plants on the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Allium munzii	Munz's onion	U.S.A. (CA)	Alliaceae	E	650	NA	NA
*	*	*	*	*	*	*	

2. Amend § 17.96(a) as follows:

a. Under Family Liliaceae, remove the designation of critical habitat for ''*Allium munzii* (Munz's onion)'';

b. Under Family Alliaceae, add a designation of critical habitat for ''*Allium munzii* (Munz's onion)'' to read as set forth below; and

c. Under Family Chenopodiaceae, revise the designation of critical habitat for ''*Atriplex coronata* var. *notiatior* (San Jacinto Valley crownscale)'' to read as set forth below:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Alliaceae: *Allium munzii* (Munz's onion)

(1) Critical habitat units are depicted for Riverside County, California, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Allium munzii* consist of one of the following two components:

(i) Clay soil series of sedimentary origin (e.g., Altamont, Auld, Bosanko, Porterville), or clay lenses (pockets of clay soils) of such that may be found as unmapped inclusions in other soil series, or soil series of sedimentary or

igneous origin with a clay subsoil (e.g., Cajalco, Las Posas, Vallecitos):

(A) Found on level or slightly sloping landscapes or terrace escarpments;

(B) Generally between the elevations of 1,200 to 2,700 ft (366 to 823 m) above mean sea level;

(C) Within intact natural surface and subsurface structures that have been minimally altered or unaltered by ground-disturbing activities (for example, disked, graded, excavated, or recontoured);

(D) Within microhabitats that receive or retain more moisture than surrounding areas, due in part to factors such as exposure, slope, and subsurface geology; and

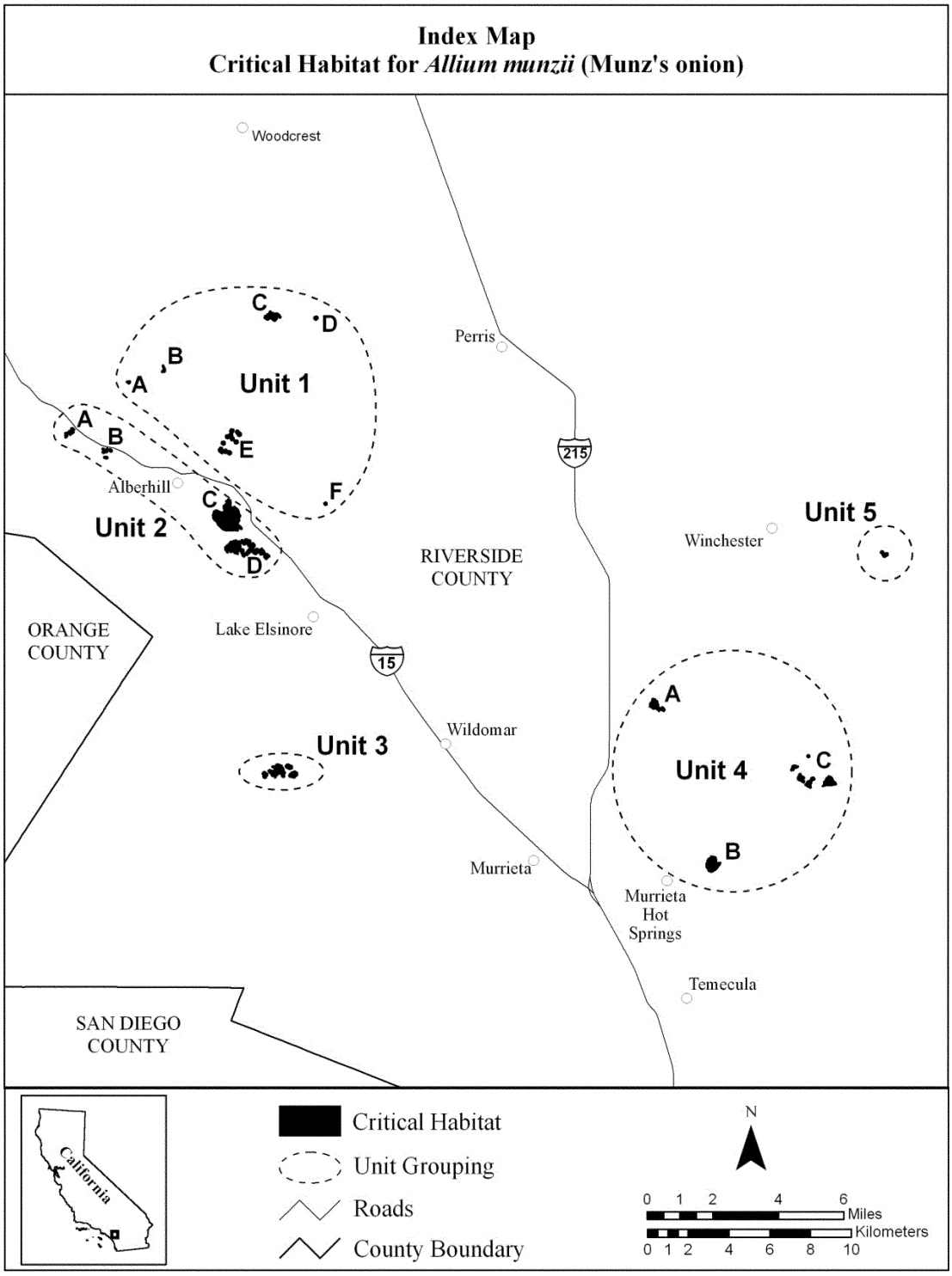
(E) Part of open native or nonnative grassland plant communities and clay soil flora, including southern needlegrass grassland, mixed grassland, and open coastal sage scrub or occasionally in cismontane juniper woodlands.

(ii) Outcrops of igneous rocks (pyroxenite) on rocky-sandy loam or clay soils within Riversidean sage scrub, generally between the elevations of 1,200 to 2,700 ft (366 to 823 m) above mean sea level.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

BILLING CODE 4310–55–P

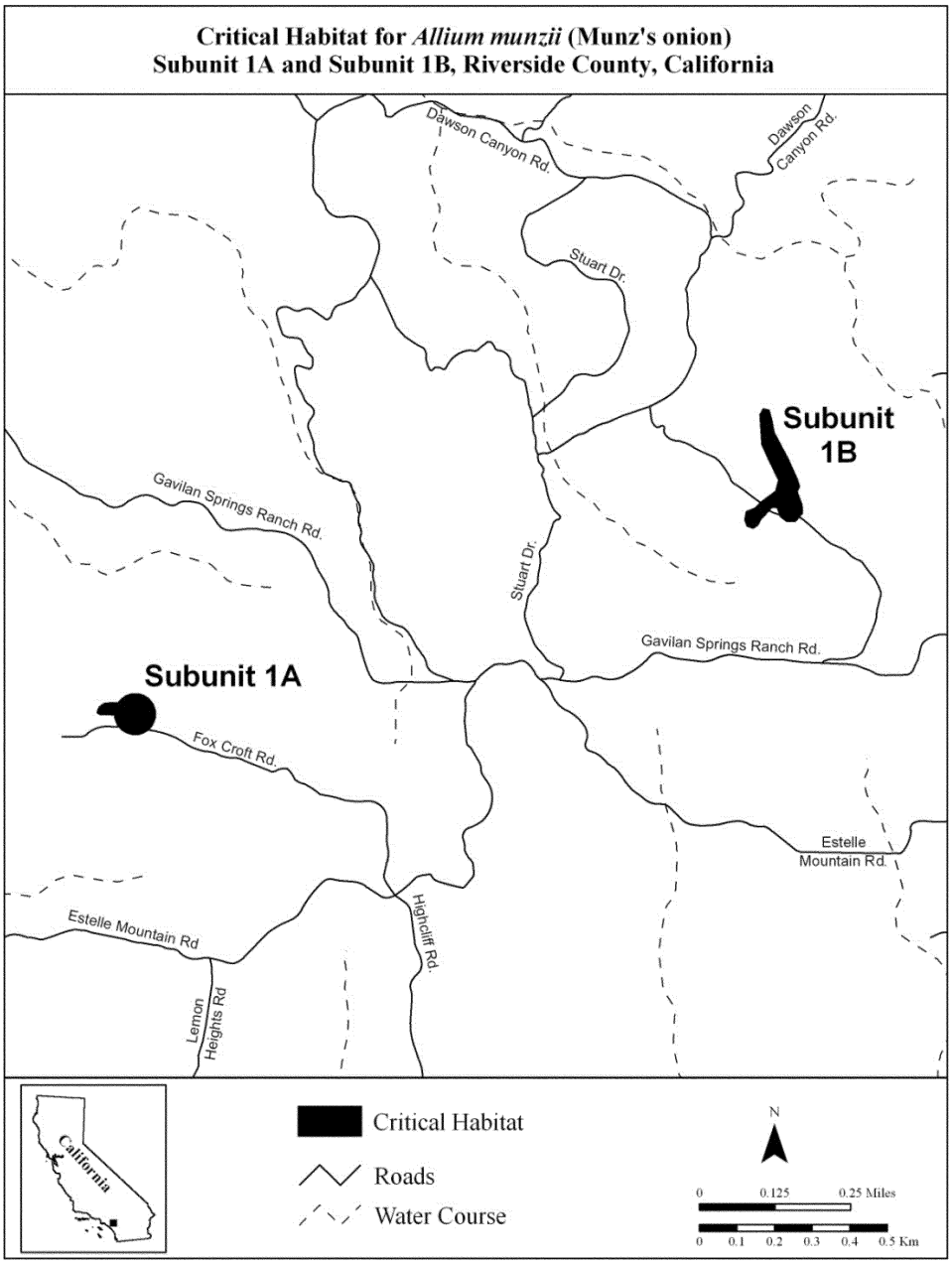
(4) *Note:* Index Map for *Allium munzii* follows:


Index Map
Critical Habitat for Allium munzii (Munz's onion)
Woodcrest
Perris
Unit 1
A
B
C
D
E
F
Unit 2
Alberhill
215
Unit 5
Winchester
RIVERSIDE
COUNTY
ORANGE
COUNTY
Lake Elsinore
15
Unit 3
Wildomar
Unit 4
Murrieta
Murrieta
Hot
Springs
Temecula
SAN DIEGO
COUNTY
California
Critical Habitat
Unit Grouping
Roads
County Boundary
N
0 1 2 4 6
Miles
0 1 2 4 6 8 10
Kilometers

(5) Subunit 1A, Estelle Mountain and Subunit 1B, Dawson Canyon: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Subunit 1A and Subunit 1B.]

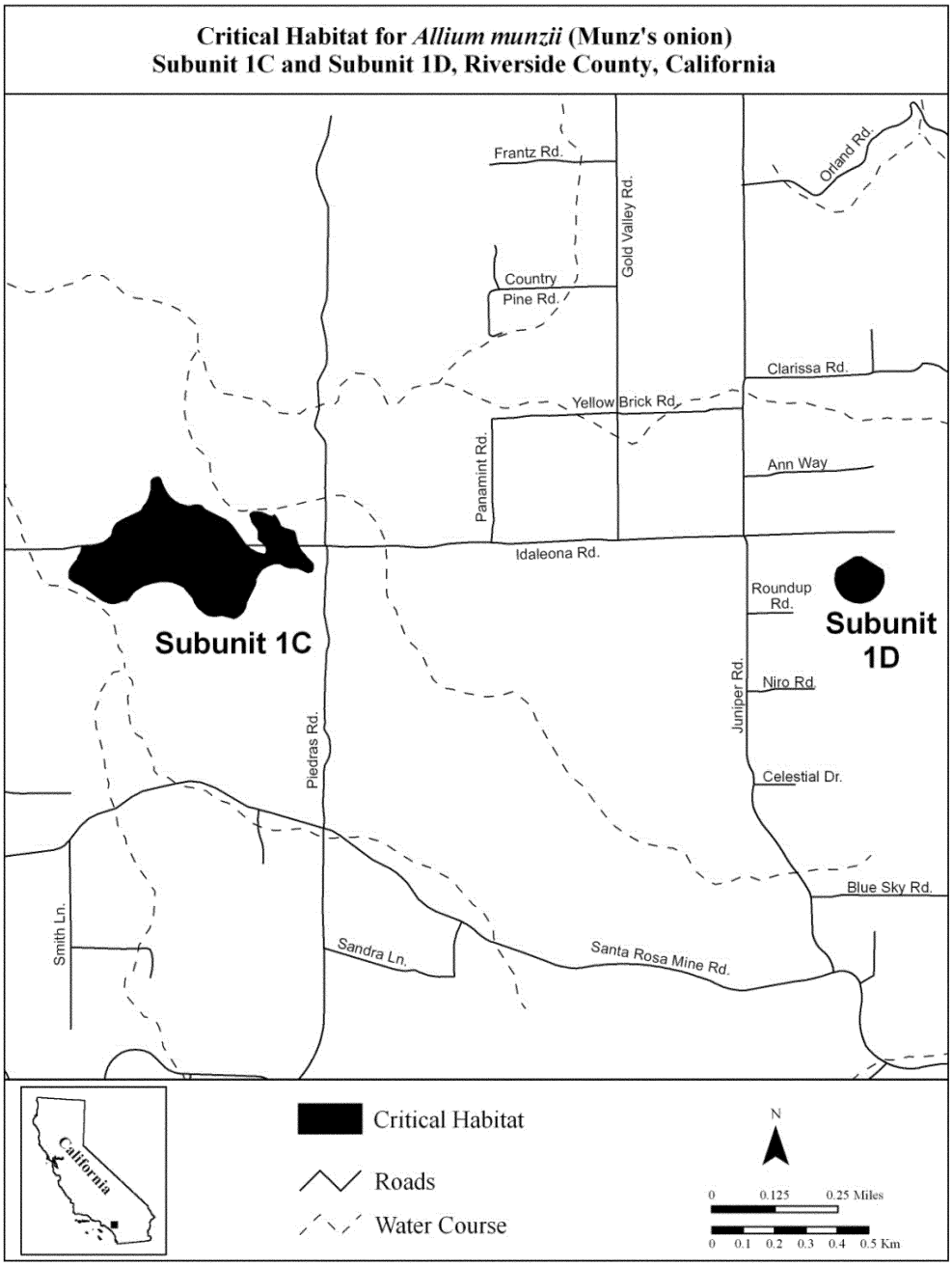
(ii) *Note:* Map of Subunit 1A and 1B follows:



(6) Subunit 1C, Gavilan Plateau and Subunit 1D, Ida-Leona: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Subunit 1C and Subunit 1D.]

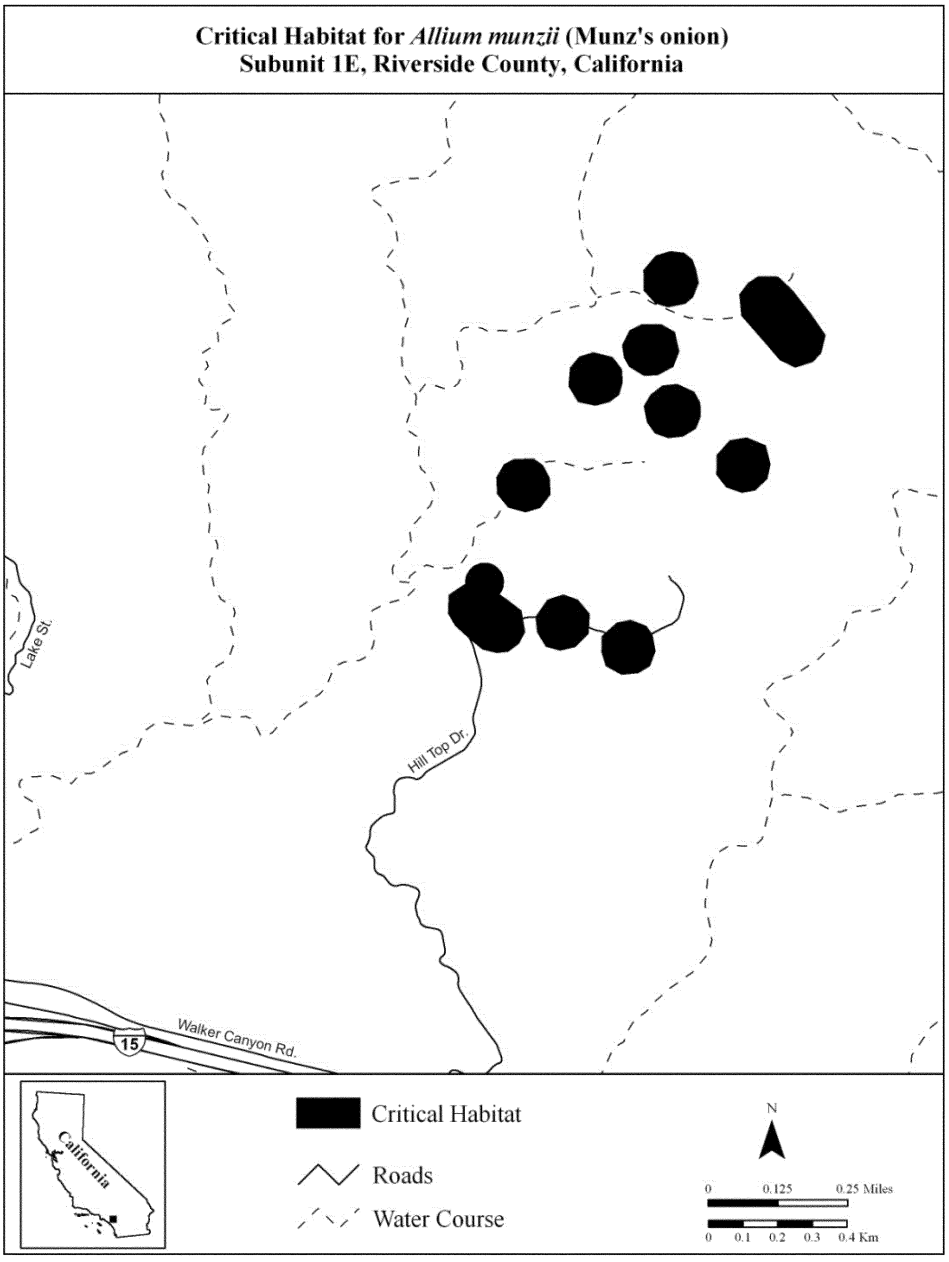
(ii) *Note:* Map of Subunit 1C and 1D follows:



(7) Subunit 1E, Northeast Alberhill: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Subunit 1E.]

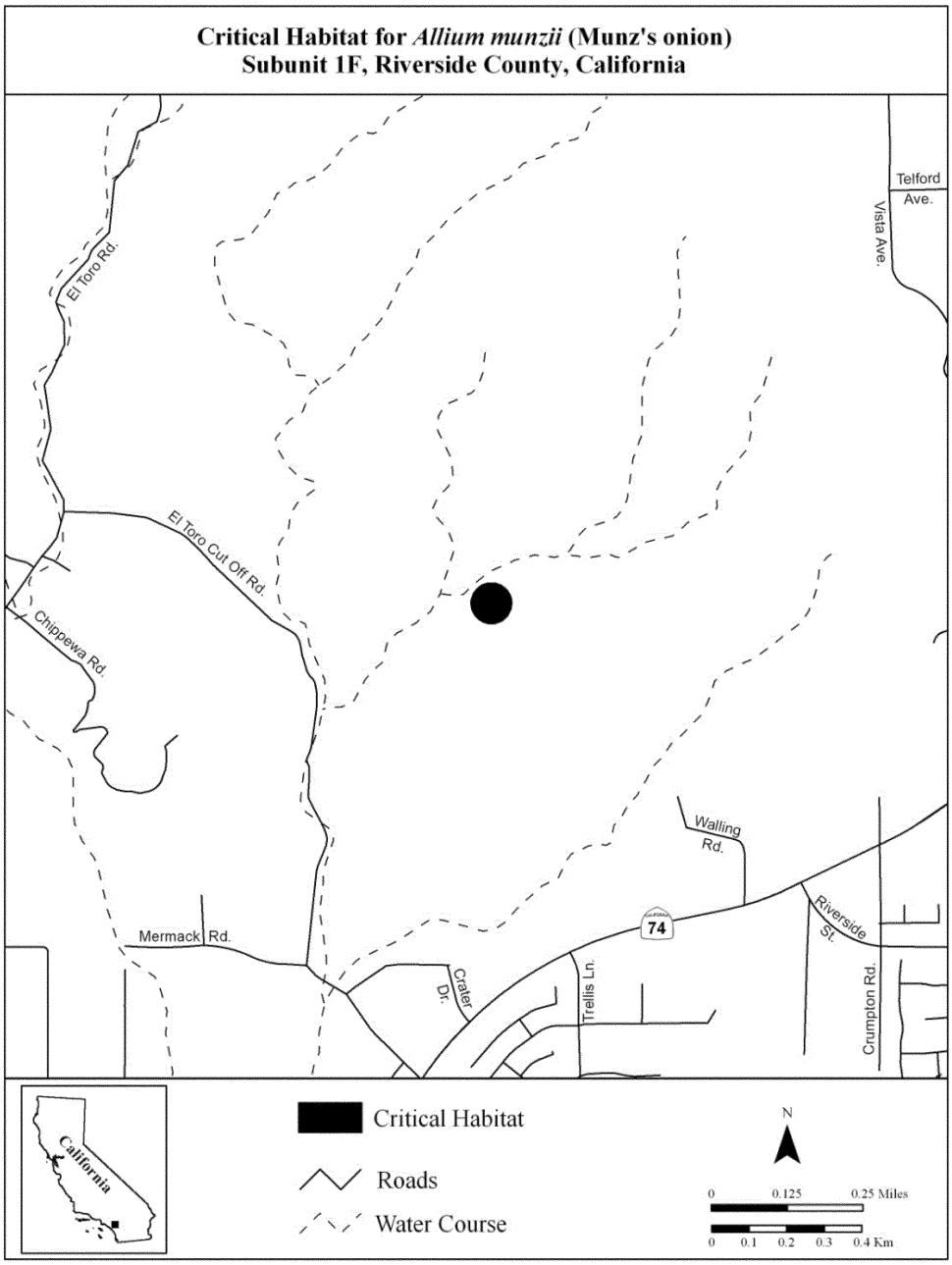
(ii) *Note:* Map of Subunit 1E follows:



(8) Subunit 1F, North Peak: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Subunit 1F.]

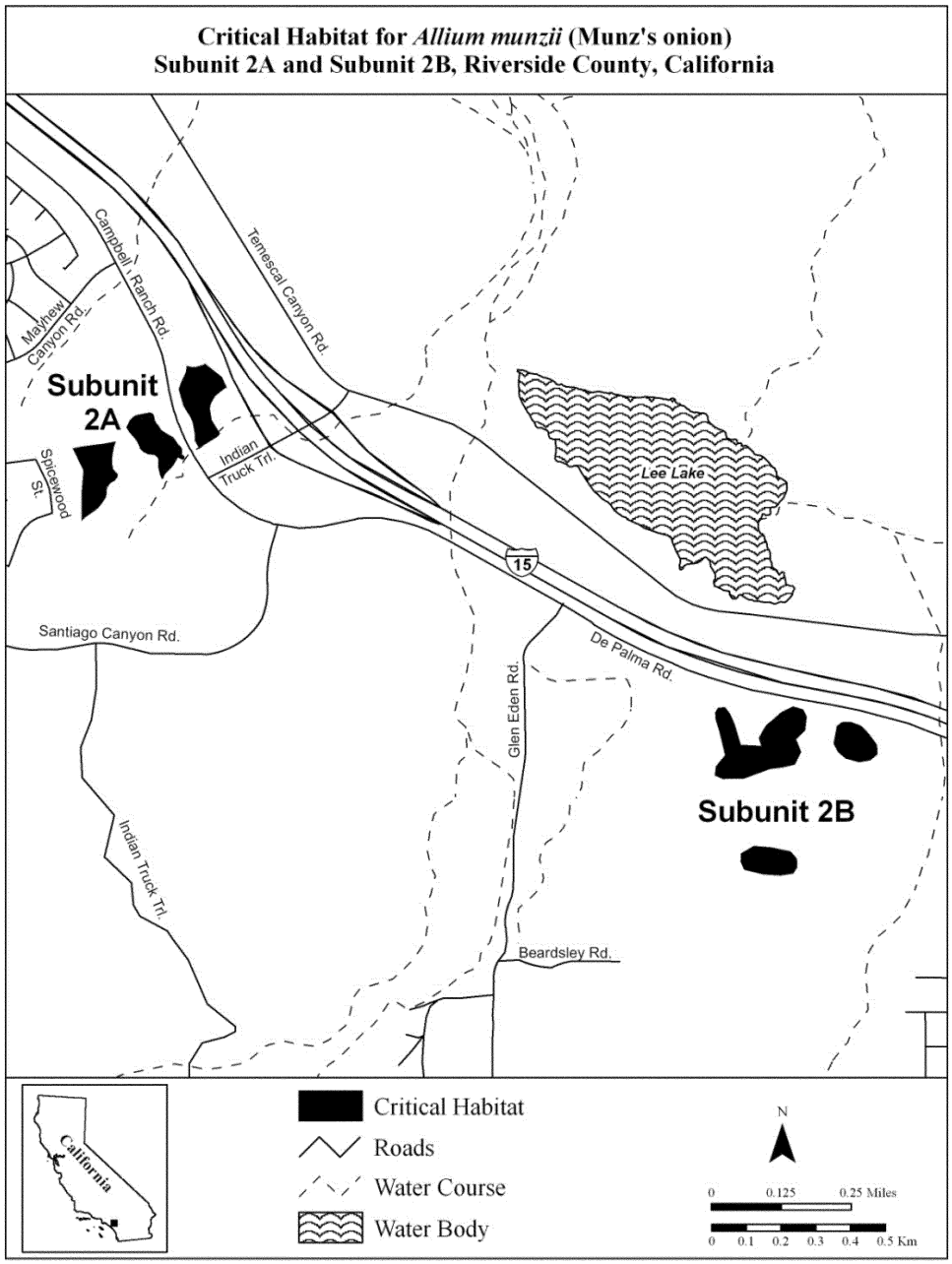
(ii) *Note:* Map of Subunit 1F follows:



(9) Subunit 2A, Sycamore Creek and Subunit 2B, De Palma Road: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Subunit 2A and Subunit 2B.]

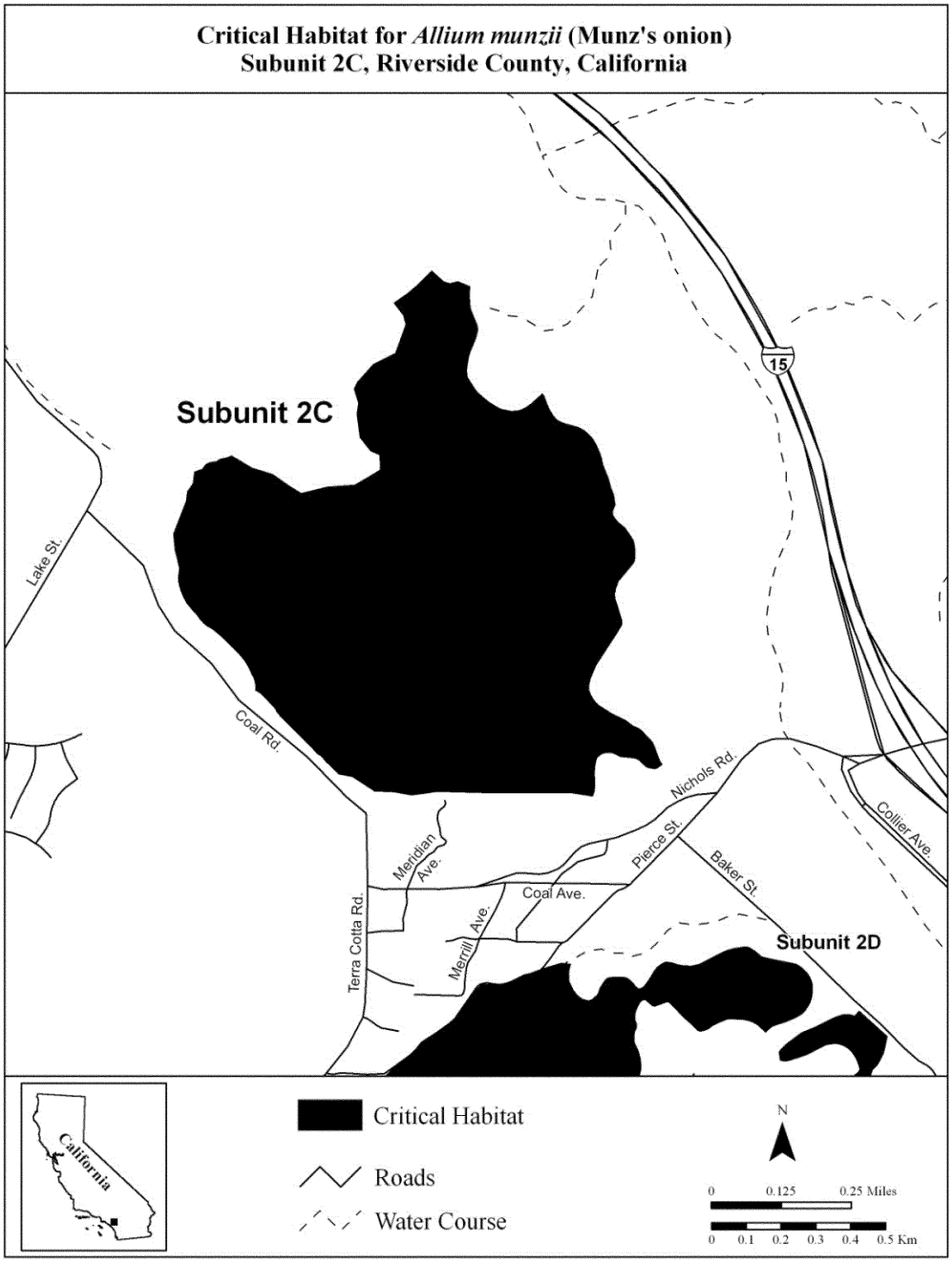
(ii) *Note:* Map of Subunit 2A and Subunit 2B follows:



(10) Subunit 2C, Alberhill Mountain: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Subunit 2C.]

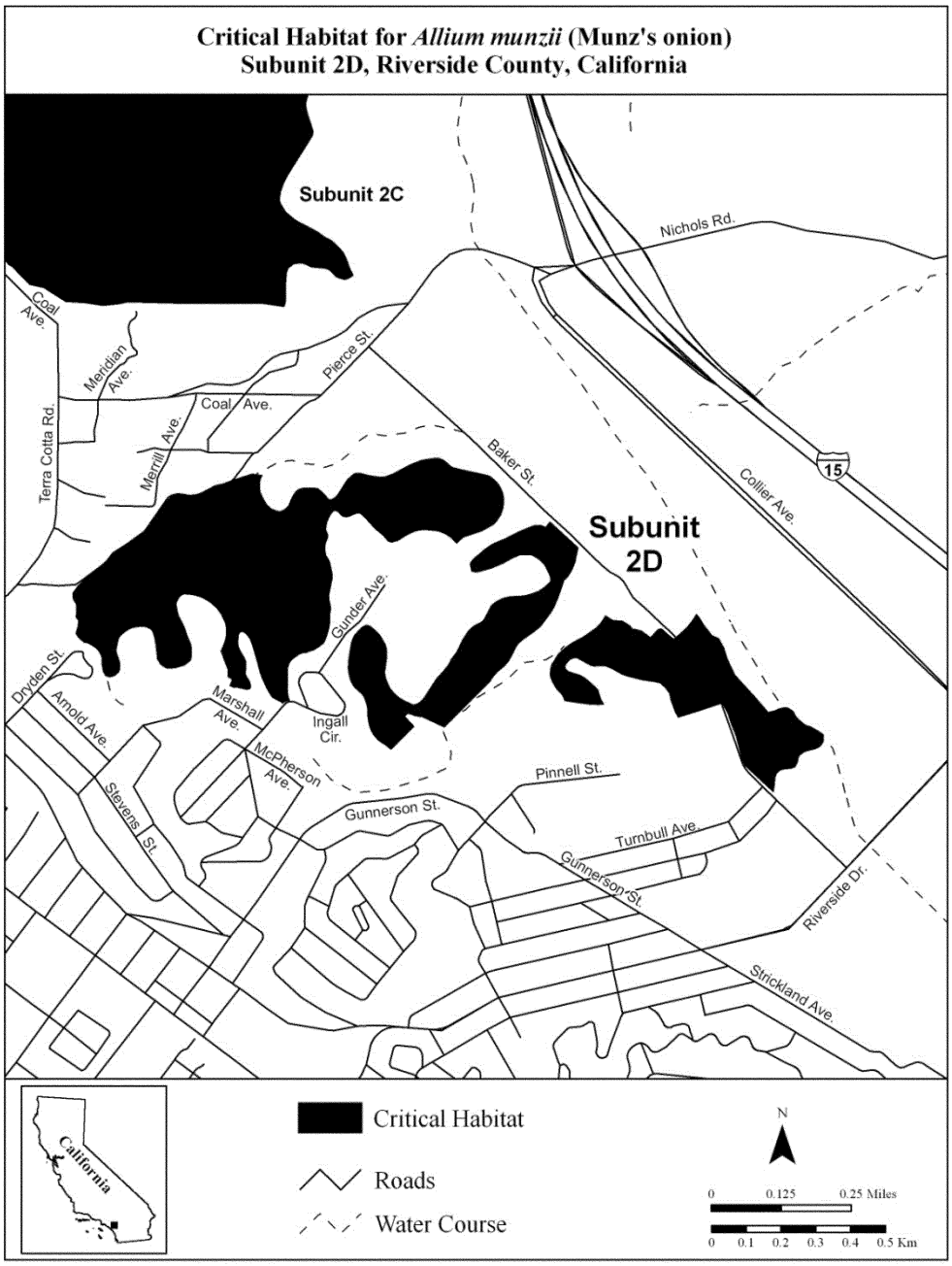
(ii) *Note:* Map of Subunit 2C follows:



(11) Subunit 2D, Alberhill Creek: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Subunit 2D.]

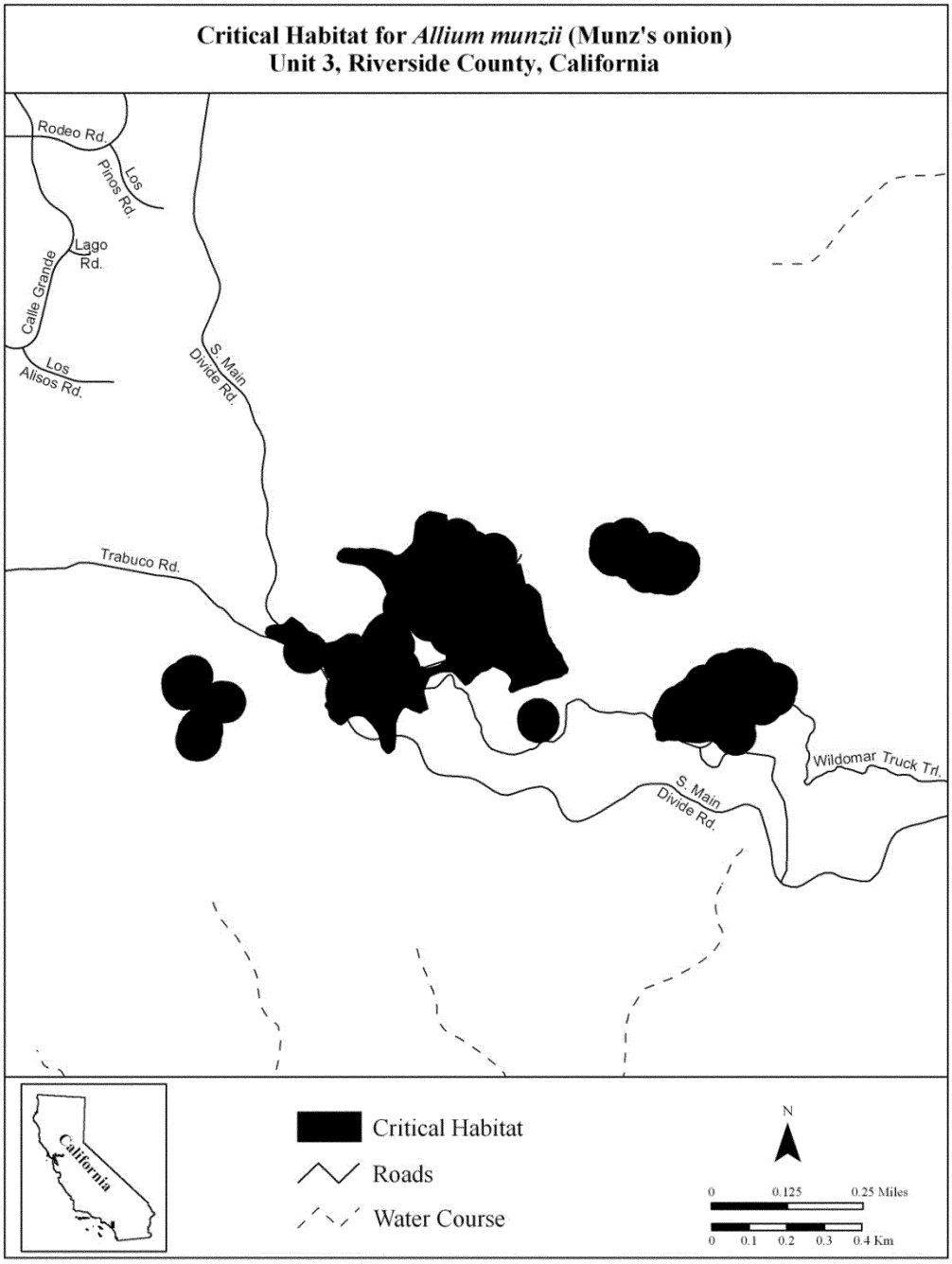
(ii) *Note:* Map of Subunit 2D follows:



(12) Unit 3, Elsinore Peak: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Unit 3.]

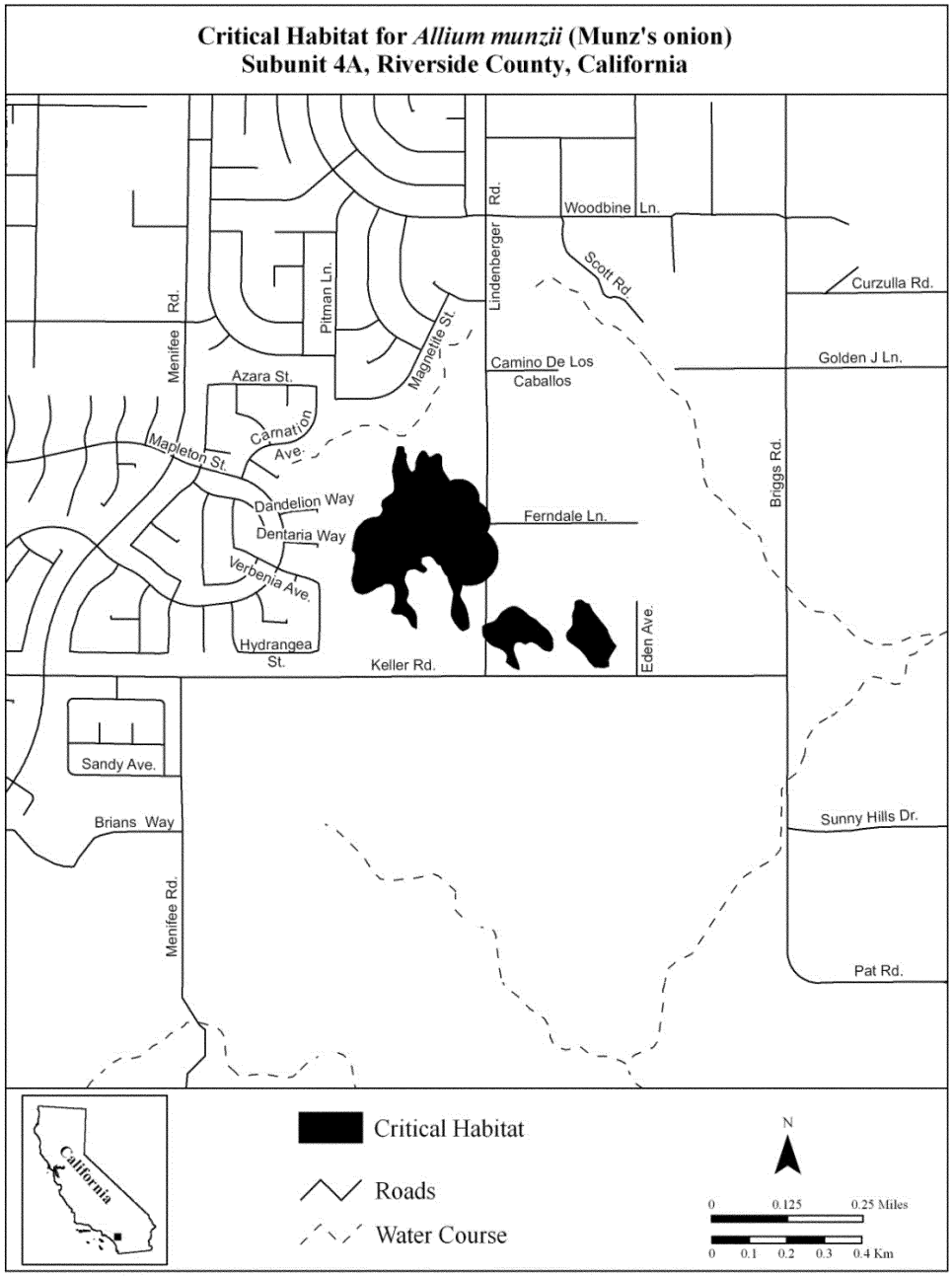
(ii) *Note:* Map of Unit 3 follows:



(13) Subunit 4A, Scott Road: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Subunit 4A.]

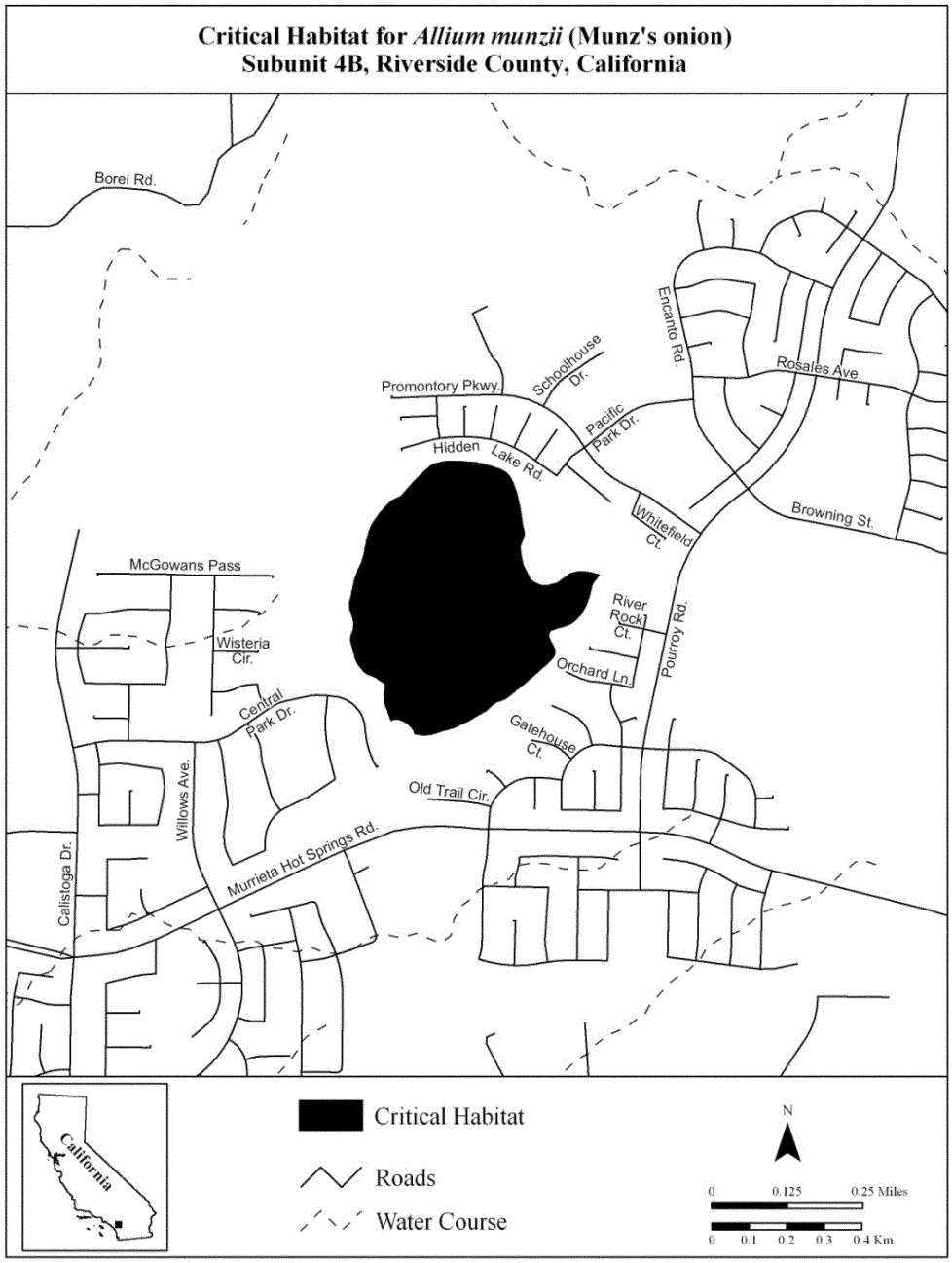
(ii) *Note:* Map of Subunit 4A follows:



(14) Subunit 4B, Skunk Hollow: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Subunit 4B.]

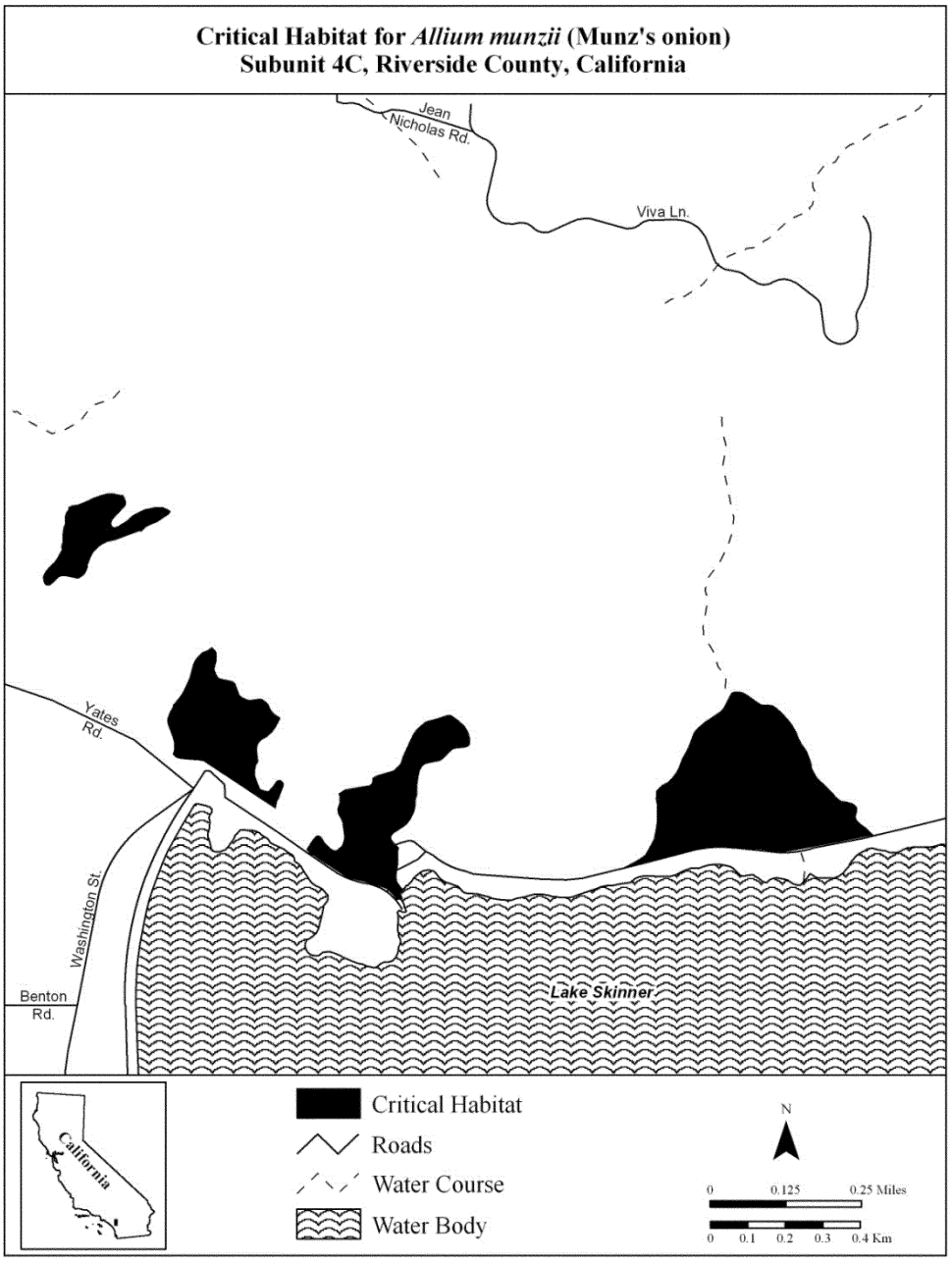
(ii) *Note:* Map of Subunit 4B follows:



(15) Subunit 4C, Bachelor Mountain: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Subunit 4C.]

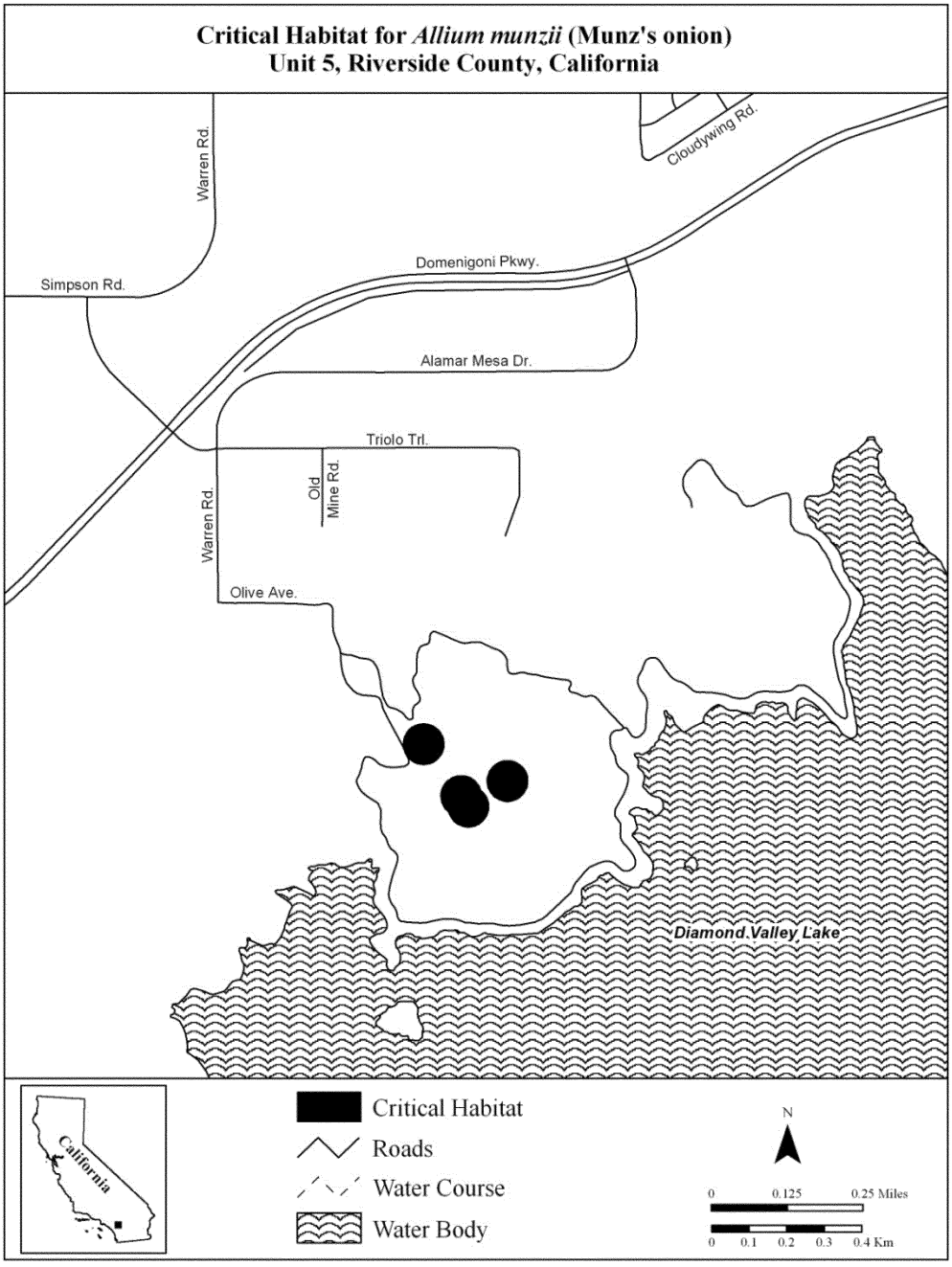
(ii) *Note:* Map of Subunit 4C follows:



(16) Unit 5, North Domenigoni Hills: Critical habitat for *Allium munzii* (Munz's onion), Riverside County, California.

(i) [Reserved for textual description of Unit 5.]

(ii) *Note:* Map of Unit 5 follows:



* * * * *

Family Chenopodiaceae: Atriplex coronata var. notatior (San Jacinto Valley crownscale)

(1) Critical habitat units are depicted for Riverside County, California, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Atriplex coronata* var. *notatior* consist of two components:

(i) Wetland habitat including floodplains and vernal pools:

(A) Associated with native vegetation communities, including alkali playa, alkali scrub, and alkali grasslands, and

(B) Characterized by seasonal inundation or localized flooding, including infrequent, large-scale flood events, with low pollutant loads; and

(ii) Slow-draining alkali soils including the Willows, Domino, Traver, Waukena, and Chino soil series with:

(A) Low permeability,

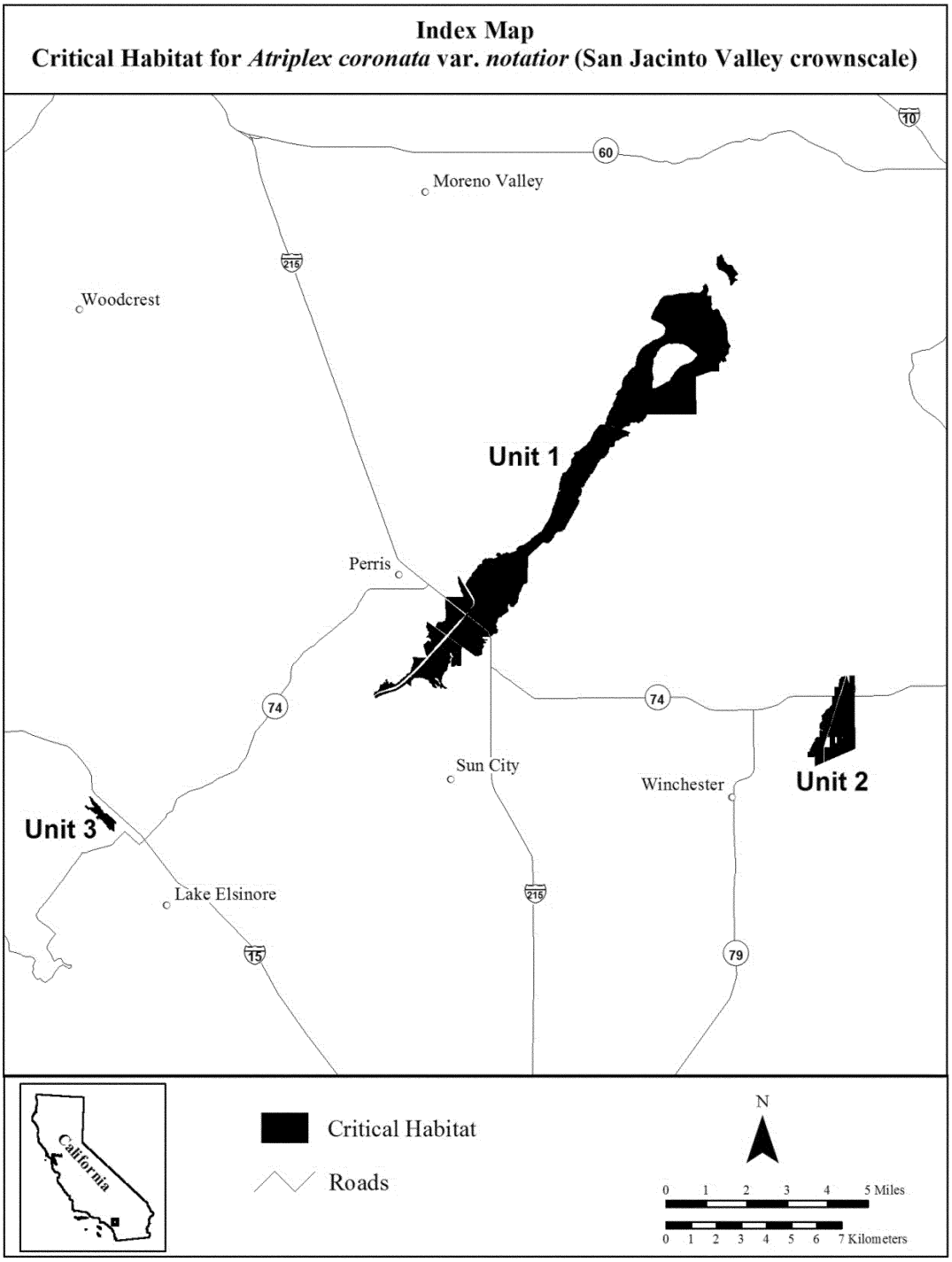
(B) Low nutrient availability, and

(C) Seasonal ponding and evaporation.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal

boundaries on the effective date of this rule.

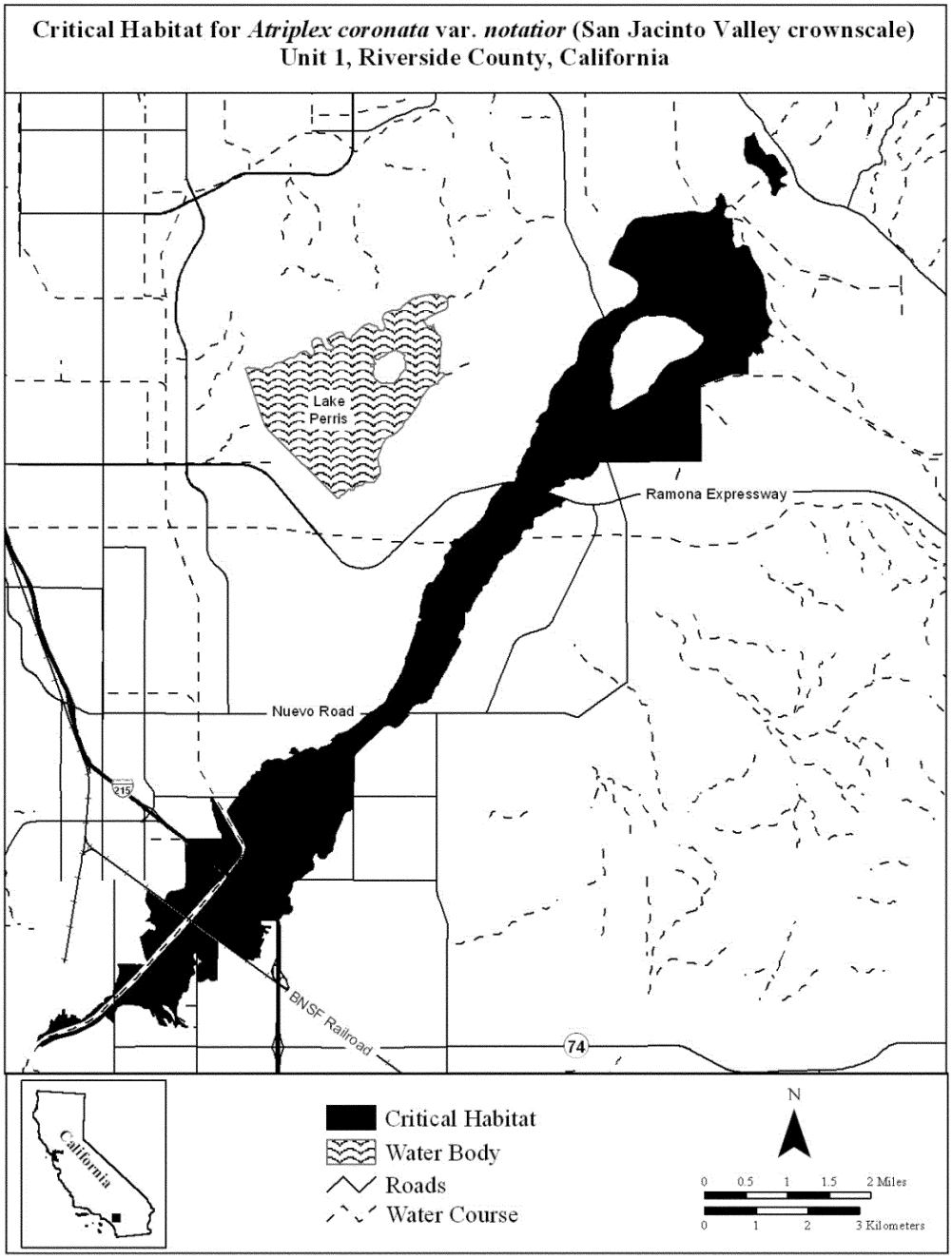
(4) *Note:* Index Map for *Atriplex coronata* var. *notatior* follows:



(5) Unit 1, San Jacinto River: Critical habitat for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale), Riverside County, California.

(i) [Reserved for textual description of Unit 1.]

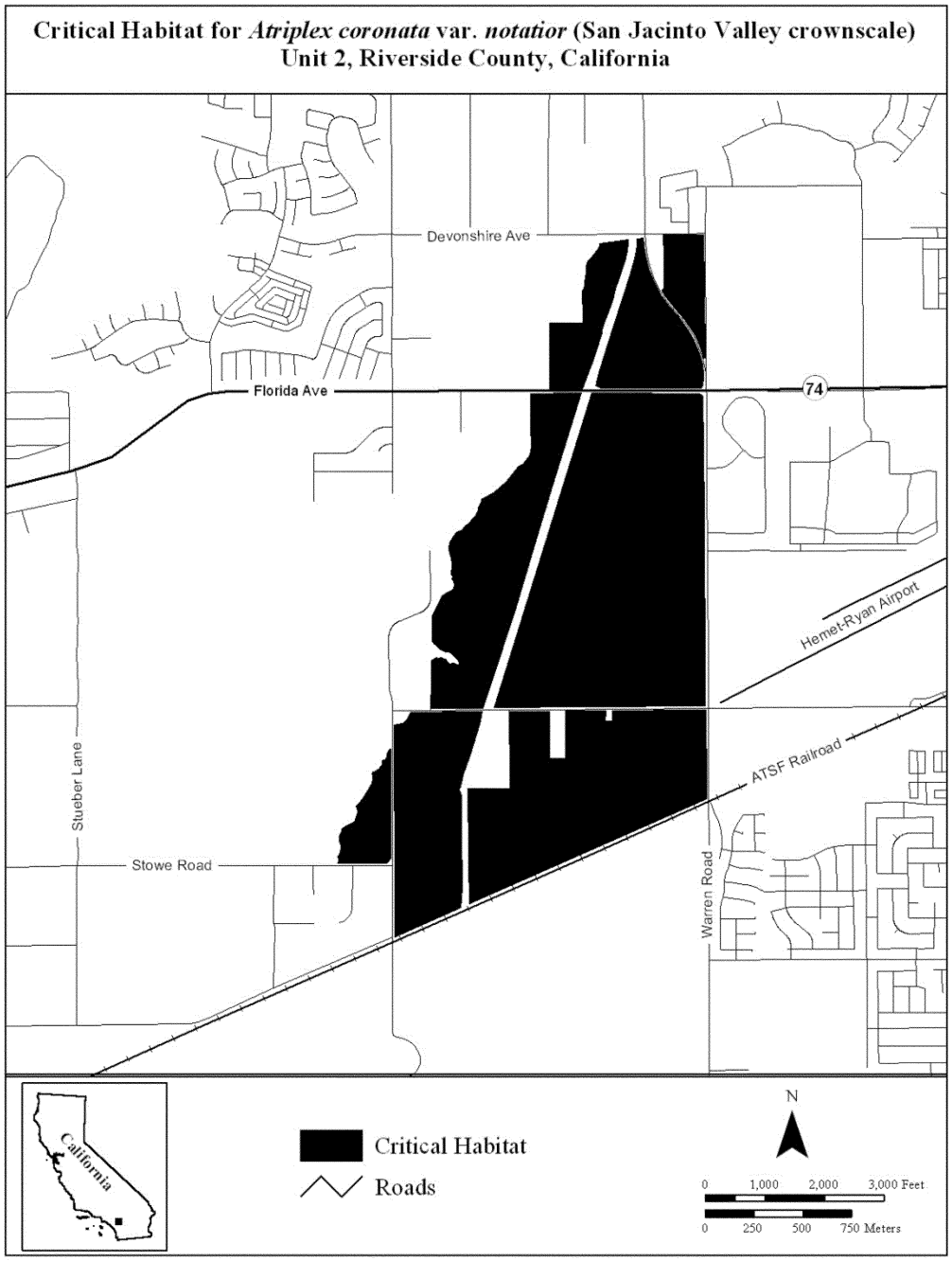
(ii) *Note:* Map of Unit 1 follows:



(6) Unit 2, Upper Salt Creek: Critical habitat for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale), Riverside County, California.

(i) [Reserved for textual description of Unit 2.]

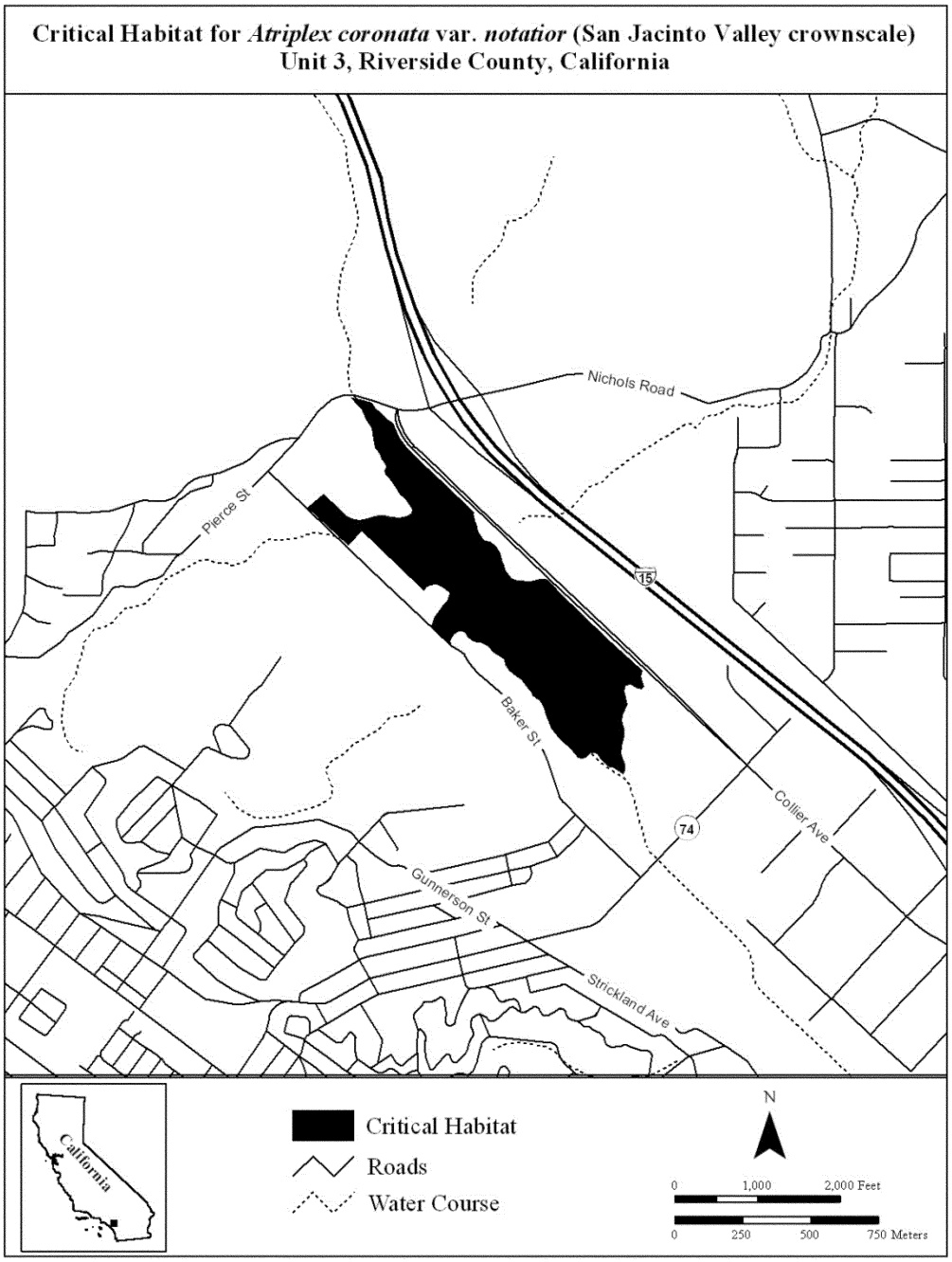
(ii) *Note:* Map of Unit 2 follows:



(7) Unit 3, Alberhill Creek: Critical habitat for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale), Riverside County, California.

(i) [Reserved for textual description of Unit 3.]

(ii) *Note:* Map of Unit 3 follows:



* * * * *

Dated: April 3, 2012.

Eilleen Sobek,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–8664 Filed 4–16–12; 8:45 am]

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FEDERAL REGISTER

Vol. 77 Tuesday,
No. 74 April 17, 2012

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Forks Springsnail and Threatened Status for San Bernardino Springsnail Throughout Their Ranges and Designation of Critical Habitat for Both Species; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2009–0083; 4500030114]

RIN 1018–AV84

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Forks Springsnail and Threatened Status for San Bernardino Springsnail Throughout Their Ranges and Designation of Critical Habitat for Both Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for the Three Forks springsnail (*Pyrgulopsis trivialis*) and threatened status for the San Bernardino springsnail (*Pyrgulopsis bernardina*); and designate critical habitat for both species under the Endangered Species Act of 1973, as amended (Act). In total, approximately 17.2 acres (6.9 hectares) are designated as critical habitat for Three Forks springsnail in Apache County, Arizona, and approximately 2.0 acres (0.8 hectares) for San Bernardino springsnail in Cochise County, Arizona. This final rule implements the Federal protections provided by the Act for these species.

DATES: This rule becomes effective on May 17, 2012.

ADDRESSES: This final rule and associated final economic analysis are available on the Internet at *http://www.regulations.gov* or *http://www.fws.gov/southwest/es/arizona/.* Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; telephone 602–242–0210; facsimile 602–242–2513.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. The Endangered Species Act sets forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants.

Under the Act, a species may be determined to be endangered or threatened based on any of the following five factors: (1) Destruction, modification, or curtailment of its habitat or range; (2) Overuse; (3) Disease or predation; (4) Inadequate existing regulations; or (5) Other natural or manmade factors. Based on our analysis under the five factors, we find that there are threats of sufficient imminence, intensity, or magnitude to cause a substantial decrease in distribution, or loss of viability of both the Three Forks springsnail and San Bernardino springsnail. Therefore, these species qualify for listing, which can only be done by issuing a rule.

We have made the following findings for the Three Forks springsnail related to these criteria:

- Historically, the Three Forks springsnail is known to have occurred in numerous springs and seeps in Apache County, Arizona. In recent years, the species' range has been reduced to the point that it has only been found at two spring complexes.
- Because the species is so limited in range, the magnitude of threats that are occurring now are high, and those that may impact the species in the foreseeable future are high as well.
- A recent high-intensity fire that burned around the only remaining populations of the Three Forks springsnail has caused the habitat of the species to be currently threatened with destruction, modification, and curtailment due to soil erosion and sedimentation during storm events.
- Also, we have found that predation by nonnative crayfish is currently threatening the Three Forks springsnail across its entire range.
- In addition to the current threats, the Three Forks springsnail is also at a high risk of extinction due to threats that could affect the species in the foreseeable future, such as the use of fire retardant chemicals during future wildfires, the potential spread and competition with New Zealand springsnails, and the potential for climate change and drought to dry its springhead habitat.
- Due to its endemic nature, the Three Forks springsnail may be more vulnerable to extinction from both present and future threats.

We have made the following findings for the Three Forks springsnail related to the five factor criteria:

- The historical range of the San Bernardino springsnail in the United States may have included several springs in Cochise County, Arizona. The current range of the species in the United States is now believed to be limited to two springs.
- The San Bernardino springsnail was recently discovered to occur at five sites in Sonora, Mexico, in at least nine springs.
- San Bernardino springsnail is not presently in danger of extinction throughout its entire range, based on the immediacy, severity, and extent of the threats.
- However, we have determined that, while significant threats are not operative now, they are likely to cause the species to become in danger of extinction in the foreseeable future.
- The species' habitat is likely to be threatened in the foreseeable future with destruction, modification, and curtailment in part of its range due to the potential use of fire retardant chemicals in the United States, and throughout its entire range in both the United States and Mexico due to potential springhead inundation, and water depletion and diversion.
- Also, we found that the San Bernardino springsnail is likely to become in danger of extinction in the foreseeable future throughout its entire range due to the potential invasion and predation by nonnative crayfish, invasion and competition with New Zealand springsnails, and climate change and drought drying its springhead habitat.
- Due to the species' endemic nature, the San Bernardino springsnail may be more vulnerable to extinction in the foreseeable future from these potential threats throughout its entire range.

Summary of the Major Provisions of the Regulatory Action

This document consists of: (1) A final rule to list the Three Forks springsnail as endangered; (2) a final rule to list the San Bernardino springsnail as threatened; and (3) final critical habitat designation for both species.

On April 12, 2011, we proposed listing these species as endangered with critical habitat. On November 17, 2011, we proposed revision of the previously proposed critical habitat for the Three Forks springsnail, based on new information indicating the species was

more widely distributed. We also announced the receipt of new information confirming that populations of springsnails in Sonora, Mexico, are San Bernardino springsnail. Since the publication of the proposed rule, we have made the following changes in the final rule:

- We previously proposed to list the San Bernardino springsnail as endangered, but upon review of additional information regarding the status of, and threats to, the springsnail in Mexico, we have determined the species meets the definition of threatened instead of endangered. We believe the species is likely to become an endangered species within the foreseeable future rather than being in danger of extinction now.
- For the San Bernardino springsnail, we expanded the Summary of Factors Affecting the Species to include a discussion factors throughout the species' entire range, including the United States and Mexico.

We obtained opinions from knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, adherence to regulations, and whether or not we had used the best available information. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final listing and critical habitat rule. As a result, we determine endangered status for the Three Forks springsnail and threatened status for the San Bernardino springsnail. We also designate critical habitat for both species. In total, approximately 17.2 acres (6.9 hectares) are designated as critical habitat for Three Forks springnail in Apache County, Arizona, and approximately 2.0 acres (0.8 hectares) for San Bernardino springsnail in Cochise County, Arizona.

Previous Federal Actions

We first identified the Three Forks springsnail as a candidate for listing on October 30, 2001 (66 FR 54808). We first identified the San Bernardino springsnail as a candidate for listing on December 6, 2007 (72 FR 69034). Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities.

On May 4, 2004, the Center for Biological Diversity petitioned the Service to list 225 species of plants and animals as endangered under the provisions of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), including the Three Forks springsnail. On June 25, 2007, we received a petition from Forest Guardians to list 475 species in the southwestern United States as threatened or endangered under the provisions of the Act, including the San Bernardino springsnail. In our most recent annual Candidate Notice of Review dated November 10, 2010 (75 FR 69222), we retained a listing priority number (LPN) of 2 for the Three Forks springsnail and the San Bernardino springsnail in accordance with our priority guidance published on September 21, 1983 (48 FR 43098). An LPN of 2 reflects threats that are both imminent and high in magnitude, as well as the taxonomic classification as a full species.

On April 12, 2011, we proposed listing the Three Forks springsnail and San Bernardino springsnail as endangered with critical habitat (76 FR 20464) under the Act (16 U.S.C. 1531 *et seq.*). Proposed critical habitat for the Three Forks springsnail included spring ecosystems within Apache County, Arizona, and for the San Bernardino springsnail spring ecosystems within Cochise County, Arizona.

On November 17, 2011, we reopened the comment period on the proposed rule, and announced the availability of a draft economic analysis (76 FR 71300). At that time, we proposed revision of the previously proposed critical habitat for the Three Forks springsnail, based on new information indicating that the species was more widely distributed along Boneyard Creek. We also announced the receipt of new information confirming that populations of springsnails in Sonora, Mexico, are San Bernardino springsnails.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed listing and designation of critical habitat for the Three Forks springsnail and San Bernardino springsnail during two comment periods from April 12 to June 13, 2011, and November 17 to December 19, 2011. We did not receive any requests for a public hearing, and thus, none was held. We also contacted associated Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule and draft economic analysis during the two comment periods.

During the 2 comment periods, we received 11 letters addressing the proposed listing and critical habitat designation. We did not receive any comments on the draft economic analysis associated with this rulemaking. However, all other substantive information provided during the comment periods has either been incorporated directly into this final determination as appropriate or addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occur, and conservation biology principles. We received responses from three of the peer reviewers.

We reviewed all comments received from peer reviewers for substantive issues and new information regarding critical habitat for the two springsnails. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

Comment (1): Peer reviewers made a number of technical scientific suggestions regarding our discussions and presentations of biological terminology, springsnail ecology, species' descriptions, habitat associations, and species distribution.

Our response: We have revised the language accordingly in this final rule.

Comment (2): One peer reviewer stated that livestock grazing is a threat to Three Forks springsnail and their habitats, because the current fence around Boneyard Bog is inadequate as evidenced by the recent presence of 25 to 35 cattle grazing near spring-seeps on numerous occasions.

Our response: Based on communication with staff from the Apache-Sitgreaves National Forests and Arizona Game and Fish Department (AGFD), the current fence around Boneyard Bog is adequate, and they have not observed livestock within the fenced exclosure. Also, since 2001, the AGFD has been conducting annual springsnail surveys (Nelson *et al.* 2002, entire) and since 1997 the Apache-Sigreaves National Forests have been implementing special management to minimize potential livestock trespass (USFS 2011b, p. 184). For further information, see Ungulate discussion

under Factor A analysis for this species, below.

Comment (3): One peer reviewer stated that it is clear the abundance and distribution of both species has declined since studies were first conducted, and the proposed rule supports listing of both species.

Our response: The Three Forks springsnail and San Bernardino springsnail have declined in abundance and distribution, and the available information continues to support listing.

Comment (4): One peer reviewer suggested that the amount of occupied habitat (particularly spring surface area) is a superior metric over abundance of individual snails for assessing status of springsnails.

Our response: When we assess the status of a species, we take into consideration the factors that may impact the species' continued existence, as well as the species' life history processes. In regards to a springsnail's abundance, we agree that limits on springsnail productivity appear to be more closely related to the availability of suitable habitat rather than number of individuals, because springsnails exhibit high fecundity. The availability of suitable habitat is one of the components we take into consideration when assessing the status of the springsnails.

Comment (5): One peer reviewer noted that numerous scattered springs along Boneyard Creek, downstream of Boneyard Bog Springs and upstream of Three Forks Springs, are inhabited by springsnails that are likely Three Forks springsnails and should be included as critical habitat.

Our response: We agree, and based on this new information indicating that the species was more widely distributed along Boneyard Creek, in November 17, 2011 (76 FR 71300), we proposed to revise the previously proposed critical habitat for the Three Forks springsnail by increasing the size of the Boneyard Bog Springs Unit, and by adding an additional unit, the Boneyard Creek Springs Unit.

Comment (6): One peer reviewer noted that recent genetic work shows that San Bernardino springsnails inhabit springs in Sonora, Mexico, on the Rancho San Bernardino, and the proposed rule does not contain a threats assessment for that portion of its range.

Our response: The genetic information was not available in early 2011 when the proposed rule was published in the **Federal Register**. We have reviewed this new information and conducted a threats assessment for San Bernardino springsnail across its entire range as part of this final rule.

Comment (7): One peer reviewer suggested that the discussion under Wildfire Suppression warrants reevaluation to avoid overstating the effects of aerial retardant on populations of Three Forks springsnail at Three Forks Springs.

Our response: The available evidence regarding the effects of fire retardant on Three Forks springsnail does not constitute definitive proof that exposure to drift resulted in the extirpation of the species from Three Forks Springs. However, we are required to utilize the best scientific and commercial information available, and conclude the information we have cited meets the criteria. It is unlikely that retardant residue traveled upstream within spring-runs, and if springsnails were exposed to retardant it would have been drift from high-elevation drops. Fire retardant chemicals are known to be toxic to aquatic life, including those fire retardants used in the Three Forks Fire in 2004. We find the inability of surveyors to locate the species at Three Forks Springs since 2005, the season immediately following suspected exposure to drift, to be a compelling reason to suspect retardant-related toxicity. However, we acknowledge the speculative nature of this conclusion, as well as technical errors, such as overestimating the amount of retardant used to fight the fire, and have revised the language accordingly in this final rule.

Comment (8): One peer reviewer did not believe sufficient evidence was provided to conclude that elk wallowing threatens the integrity of an entire spring system.

Our response: Field observations, largely from Service biologists, have provided anecdotal evidence that wet seeps and boggy areas characterized by elk wallows are not occupied by Three Forks springsnails, and are unsuitable for the species. Even though elk wallowing is a factor that seems to be impacting the Three Forks springsnail's habitat, we do not believe it is occurring at a scale that would cause the extinction of Three Forks springsnail on its own. However, in combination with the other threats identified in this five-factor analysis, we think elk wallowing may be contributing to the species' risk of extinction by reducing its long-term viability.

Comment (9): One peer reviewer stated that it is unclear from the information in the proposed rule if inundation continues to be a threat, particularly at House Pond.

Our response: The San Bernardino springsnail is mainly found near spring vents (area where water emerges from underground) and in association with high water velocity. Inundation can alter the springsnail's preferred habitat by increasing water depth, reducing water velocity, and causing shifts in substrate (the base on which an organism lives) composition, vegetation, and water chemistry. Because of inundation's ability to alter the springsnail's preferred habitat, we consider springhead inundation to be a threat to the San Bernardino springsnail's continued existence. For more details on this issue, please see *Factor A* analysis for the San Bernardino springsnail, below.

Comment (10): One peer reviewer indicated that the threat of groundwater depletion to the San Bernardino springsnail is not clearly demonstrated.

Our response: The use of the phrase ''groundwater depletion'' has been revised in this final rule, because it did imply an unverified connection to identifiable groundwater pumping or withdrawal. The loss of habitat and the springsnail population at Snail Spring was clearly due to the loss of water flow. However, the underlying hydrologic mechanism that caused the spring to dry is unclear. Additionally, because that population is now extirpated, the threat from water depletion is no longer acting upon the species at that site. We have revised the language accordingly in this final rule.

Comment (11): One peer reviewer questioned the potential effects of glyphosate. The reviewer stated the use of the herbicide glyphosate (Roundup®) on the John Slaughter Ranch Museum was not well documented, and the pesticide has low toxicity for freshwater mollusks.

Our response: Based on a more in-depth evaluation of the available information, the possible detrimental effects of glyphosate exposure to springsnails are not well supported. We have revised the language accordingly in this final rule.

Comment (12): One peer reviewer questioned our conclusions regarding the potential effects of nonnative crayfish (*Orconectis virilis*) on the Three Forks springsnail.

Our response: Our conclusion regarding the threat of crayfish predation on the Three Forks springsnail is based on the fact that nonnative crayfish are known predators of aquatic snails (Fernandez and Rosen 1996, pp. 24–25; Parkyn *et al.* 1997, p. 690), and are relatively recent invaders of Three Forks springsnail habitats. We also drew our conclusion from field observations that noted a concurrent decline in springsnail abundance in conjunction with an increase in crayfish

abundance. Therefore, based upon the best available information, we consider nonnative crayfish predation to be a threat to the Three Forks springsnail.

Comment (13): One peer reviewer asked how haplotype differentiation would factor into the need to repopulate Three Forks Springs to ensure the ecological representation of the Three Forks springsnail.

Our response: We believe information on genetic diversity will be a critical element in determining the most appropriate manner in which to promote recovery of the Three Forks springsnail, particularly at Three Forks Springs. It is our goal to maintain the genetic diversity of the species, and we have commissioned a genetic study to review the genetic relationships between and among Three Forks springsnails within each critical habitat unit. The decision of whether or not to allow natural repopulation from upstream populations, or to conduct active translocations, will be determined in the context of a recovery team comprising Service personnel, species experts, and other stakeholders.

Comment (14): One peer reviewer stated that Tule Spring does not appear conducive to occupation by San Bernardino springsnail, particularly in regard to the presence of the primary constituent elements (PCEs), and should not be designated as critical habitat.

Our response: Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We have determined that Tule Spring is essential to the conservation of the San Bernardino springsnail, because it provides redundancy of the species if a population were to become established there either through natural or artificial reintroductions.

Comments From the States

Section 4(i) of the Act states the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition. We received two comment letters from the AGFD. The majority of AGFD's comments were similar to those expressed by peer reviewers, and have been addressed above (see our responses (3), (5), (8), and (14) under *Peer Reviewer Comments*).

Comment (15): The AGFD stated that, due to new information on its status and distribution, the San Bernardino springsnail is at less risk to extinction, and they would support not listing this species.

Our response: We have reviewed the new information indicating the San Bernardino springsnail is more widespread than previously believed, particularly in Sonora, Mexico. We have included these sites in our five-factor analysis, and have concluded that sufficient threats still exist to warrant listing the species as threatened.

Comments From the U.S. Forest Service

We did not receive comments from the U.S. Forest Service (USFS) specifically on the proposed rule. However, we did receive a map from the USFS during the open comment period on the proposed rule to designate critical habitat for the Chiricahua leopard frog (*Lithobates chiricahuensis*) (76 FR 58441, September 21, 2011) outlining the area they are considering as the Three Forks Recommended Research Natural Area (RNA) and Associated Features.

Public Comments

Several commenters made numerous comments similar to those expressed by peer reviewers, and which have been addressed above (see our responses (3), (5), (6), (11), and (14) under *Peer Reviewer Comments*).

Comment (16): One commenter noted that current husbandry research indicates that the Three Forks springsnail requires a consistent environment in order to thrive, particularly in the context of water quality and temperature.

Our response: We have compiled the available information regarding ongoing research on captive populations of Three Forks springsnail and incorporated this information into the final rule as appropriate.

Comment (17): One commenter stated that, at the time of public comment, the Wallow Fire was burning in the White Mountains, potentially threatening remaining populations of Three Forks springsnail.

Our response: We have compiled the available information regarding the Wallow fire and incorporated it into the final rule as appropriate. Wildfire has been known to have negative effects on springsnails, and most Three Forks springsnail sites were severely burned. However, reporting indicates that aerial fire retardants were not applied along Boneyard Creek, because the fire burned too hot and fast. At this time, we do not know what effect the Wallow Fire will have on the long-term viability of Three Forks springsnail. We will continue to work with the USFS, AGFD, and interested stakeholders, to monitor and conserve the species.

Comment (18): One commenter questioned what actions the Service was taking to alter established policies identified in the preamble to the proposed rule under The Inadequacy of Existing Regulatory Mechanisms.

Our response: Many regulatory mechanisms discussed are under the purview and discretion of other Federal and State agencies. The Service has no regulatory authority to affect change to existing regulatory mechanisms of other agencies. However, we do work under the authorities of the Act to assist and coordinate with other agencies to ensure their actions are protective of threatened and endangered species and their critical habitats.

Comment (19): One commenter stated additional suitable springs in the vicinity of habitat currently occupied by the San Bernardino springsnail should be designated as critical habitat.

Our response: Other than those discussed in this final rule, the commenter did not provide nor do we have any information on other springs in the vicinity of habitat currently occupied by the San Bernardino springsnail in the United States to evaluate for critical habitat. Although several springs in Sonora, Mexico, provide habitat for the species, we do not designate critical habitat in foreign countries.

Comment (20): One commenter stated that the Service should consider designation of critical habitat throughout the historical ranges of both species, and include areas that are not currently occupied.

Our response: In this final critical habitat designation, we are including both occupied and unoccupied units, for both species. In accordance with section 3(5)(A) of the Act, we are designating critical habitat in specific areas within the geographic area occupied by the species at the time of listing, which contain the physical and biological features essential for the conservation of the species, and which may require special management, as well as specific areas outside the geographic area occupied by the species at the time of listing, and are essential to the conservation of the species. In this final rule, the unoccupied units we designated as critical habitat are areas within the historical ranges of both species.

Summary of Changes From the Proposed Rule

Since the publication of the April 12, 2011 (76 FR 20464), proposed rule to list and designate critical habitat for the

Three Forks springsnail and San Bernardino springsnail, and the November 17, 2011 (76 FR 71300), proposed revision of the critical habitat for the Three Forks springsnail, we have made the following changes in this final rule:

(1) We previously proposed to list the San Bernardino springsnail as endangered, but upon review of additional information, which we described in the notice announcing the availability of a draft economic analysis (76 FR 71300; November 17, 2011), regarding the status of, and threats to, the springsnail in Mexico, we have the determined the species meets the definition of threatened instead of endangered. Based on the best available information at this time, the species is likely to become an endangered species within the foreseeable future rather than being in danger of extinction now.

(2) For the San Bernardino springsnail, we expanded the Summary of Factors Affecting the Species to include a discussion of factors throughout the species' entire range, including the United States and Mexico.

Endangered Status for Three Forks Springsnail and Threatened Status for San Bernardino Springsnail

It is our intent to discuss below only those topics directly relevant to the listing of the Three Forks springsnail as endangered, and the San Bernardino springsnail as threatened, in this section of the final rule.

Species Information

Both the Three Forks springsnail and San Bernardino springsnail are members of the genus *Pyrgulopsis* in the family Hydrobiidae. In the arid Southwest, springsnails are largely relicts of the wetter Pleistocene Epoch (2.5 million to 10,000 years ago), and are typically distributed across the landscape as geographically isolated populations exhibiting a high degree of endemism (found only in a particular area or region) (Bequart and Miller 1973, p. 214; Taylor 1987, pp. 5–6; Shepard 1993, p. 354; Hershler and Sada 2002, p. 255).

Springsnails are strictly aquatic, and respiration occurs through an internal gill. Springsnails in the genus *Pyrgulopsis* are egg-layers with a single small egg capsule deposited on a hard surface (Hershler 1998, p. 14; Pearson 2011, p. 3). The larval stage is completed in the egg capsule, and upon hatching, tiny snails emerge into their adult habitat (Brusca and Brusca 1990, p. 759; Hershler and Sada 2002, p. 256). The sexes are separate, and females are noticeably larger than males. Mobility is limited, and significant migration likely does not occur, although aquatic snails have been known to disperse by becoming attached to the feathers of migratory birds (Roscoe 1955, p. 66; Dundee *et al.* 1967, pp. 89–90). Springsnails in the family Hydrobiidae feed primarily on periphyton, which is a complex mixture of algae, detritus, bacteria, and other microbes that live upon submerged surfaces in aquatic environments (Mladenka 1992, pp. 46, 81; Hershler and Sada 2002, p. 256; Lysne *et al.* 2007, p. 649). The life span of most aquatic snails is 9 to 15 months (Pennak 1989, p. 552); the survival of one species in the genus *Pyrgulopsis* in the laboratory was nearly 13 months (Lysne *et al.* 2007, p. 3).

Hydrobiid snails occur in springs, seeps, spring runs, and a variety of waters, but particularly spring systems that produce running water. Snails in the genus *Pyrgulopsis* are rarely found in mud or soft sediments (Hershler 1998, p. 14), and are typically more abundant in gravel-to cobble-size substrates (Frest and Johannes 1995, p. 203; Malcom *et al.* 2005, p. 75; Martinez and Thome 2006, pp. 12–13; Lysne *et al.* 2007, p. 650). These substrate types provide a suitable surface for springsnails to graze and lay eggs (Taylor 1987, p. 5; Hersler 1998, p. 14).

Proximity to springheads, where water emerges from the ground, plays a key role in the life history of springsnails. Many springsnail species exhibit decreased abundance farther away from spring vents, presumably due to their need for stable water chemistry and flow provided by spring waters (Hershler 1984, p. 68; Hershler 1998, p. 11; Hershler and Sada 2002, p. 256; Martinez and Thome 2006, p. 14; Tsai *et al.* 2007, p. 216). They are sensitive to water quality, and each species is usually found within relatively narrow habitat parameters (Sada 2008, p. 59). Several habitat parameters, such as substrate, dissolved carbon dioxide, dissolved oxygen, temperature, conductivity, pH, and water depth, have been shown to influence the distribution and abundance of *Pyrgulopsis* snails (O'Brien and Blinn 1999, pp. 231–232; Mladenka and Minshall 2001, pp. 209–211; Malcom *et al.* 2005, p. 75; Martinez and Thome 2006. pp. 12–15; Lysne *et al.* 2007, p. 650; Tsai *et al.* 2007, p. 2006; Martinez and Rogowski 2011, pp. 218–220). Dissolved salts such as calcium carbonate may also be important factors because they are essential for shell formation (Pennak 1989, p. 552).

Three Forks Springsnail

The Three Forks springsnail was originally described as *Fontelicella trivialis* by Taylor (1987, pp. 30–32) and later *Pyrgulopsis confluentis* by Hershler and Landye (1988, pp. 32–35) from a spring-fed pond at Three Forks, Apache County, Arizona. The species was renamed *Pyrgulopsis trivialis* by Hershler (1994, pp. 68–69). We have carefully reviewed the available taxonomic information (Landye 1973, p. 49; Taylor 1987, pp. 30–32; Hershler and Landye 1988, pp. 32–35; Hershler 1994, pp. 68–69; Hurt 2004, p. 1176), and conclude that Three Forks springsnail is a valid taxon (entity). The Three Forks springsnail is a variably sized species, with a shell height (length) of 0.06 to 0.19 inches (in) (1.5 to 4.8 millimeters (mm). A detailed description of the identifying characteristics of the Three Forks springsnail is found in Taylor (1987, pp. 30–32), Hershler and Landye (1988, pp. 32–35), and Hershler (1994, pp. 68–69).

Historically, the Three Forks springsnail is known to have occurred in numerous springs and seeps along Boneyard Creek and its confluence with the North Fork East Fork Black River in the White Mountains on the Apache-Sitgreaves National Forests, in Apache County, east-central Arizona. In recent years, the springnail was found only in the Three Forks Springs, Boneyard Bog Springs, and Boneyard Creek Springs. Each of these spring complexes comprise few to many spring vents (Table 1) and are found in shallow canyon drainage or open mountain meadows at 8,200 feet (ft) (2,500 meters (m)) in elevation. These springs are spread across 3.7 miles (mi) (6 kilometers (km)) of perennial flowing stream. The species has been found in free-flowing springheads, concrete boxed springheads, spring runs, spring seeps, and shallow ponded water (Martinez and Myers 2008, p. 189). Unfortunately, the species was extirpated from Three Forks Springs in 2004 following the Three Forks Springs Fire (see a more detailed discussion on the effects of this fire under *Factor A* analysis for this species, below).

TABLE 1—OCCUPANCY OF THE THREE FORKS SPRINGSNAIL IN SPRINGS ALONG BONEYARD CREEK AND NORTH FORK EAST FORK BLACK RIVER, ARIZONA

Area of recent occurrence	Number of springs	Currently occupied	Year of last verified occupancy
Three Forks Springs	At least 8	No	2003
Boneyard Bog Springs	At least 8	Yes	2010
Boneyard Creek Springs	At least 11	Yes	2010

Martinez and Myers (2008, pp. 189–194) found that presence of Three Forks springsnail was associated with gravel and pebble substrates, shallow water up to 2.4 in (6 centimeters (cm)) deep, high conductivity, alkaline waters of pH 8, and the presence of pond snails (*Physa gyrina*). Martinez and Rogowski (2011, p. 218) found that density of Three Forks springsnail was greater in water depths less than 2.2 in (5.6 cm), where density of pond snails was less than 5.5 per square yard (4.6 per square meter), and where distance from the springhead was less than 2.6 ft (0.8 m). In captivity, the species selected water depths of 3.2 in (8.1 cm) in an aquarium that ranged from 1.9 in (4.8 cm) to 7.5 in (19.1 cm) in depth (Rogowski 2011, p. 1). It has been shown that density of Three Forks springsnail is significantly greater on gravel and cobble substrates (Martinez and Rogowski 2011, p. 220; Martinez and Myers 2002, p. 1), though the species has been reported as ''abundant'' in the fine-grained mud of a 0.03-acre (ac) (0.01-hectare (ha)) pond at Three Forks Springs (Taylor 1987, p. 32). Abundance has been found to decrease downstream from springheads (Martinez and Rogowski 2011, p. 218, Nelson *et al.* 2002, p. 11), consistent with studies of other springsnails (Hershler 1984, p. 68; Hershler 1998, p. 11; Hershler and Sada 2002, p. 256; Martinez and Thome 2006, p. 14; Tsai *et al.* 2007, p. 216). The Three Forks springsnail was known to occur in ponded springboxes and the big pond at Three Forks, prior to extirpation. Although research indicates the species exhibits higher density in shallower water, the species does not appear to be intolerant of deeper ponded water. In captive settings, the number of observed living springsnails declined along with decreasing water temperature (Phoenix Zoo 2009, p. 2), and the species preferred temperatures near 71.6 degrees Fahrenheit (°F) (22 degrees Celsius (°C)) (Rogowski and Martinez 2010, p. 1; Rogowski 2011, p. 1).

The Three Forks springsnail was historically abundant within all spring ecosystems where found, though with patchy micro-distribution. Nelson *et al.* (2002, p. 5) reported Three Forks springsnail densities of approximately 72 snails per square yard (60 snails per square meter) at Three Forks Springs, and approximately 945 per square yard (790 snails per square meter) at Boneyard Bog Springs. The highest number recorded at a single springbrook occurred in a 254-square yards (213-square meters) area at Three Forks Springs in 2002, where tens of thousands of individual snails were estimated (Martinez 2009, pp. 31–32). Unfortunately, the Three Forks springsnail was last documented at Three Forks Springs in 2003. The AGFD has been conducting annual surveys since 2001 (Nelson *et al.* 2002, entire), and they have been reporting very low numbers of the springsnails at Three Forks Springs since 2005 (Cox 2007, p. 1; Bailey 2008, p. 1; Grosch 2010, p. 1). However, no voucher specimens (specimens collected to verify species identification) were actually collected until 2011, when it was discovered that the small snails from Three Forks Springs were not Three Forks springsnails (Sorensen 2011a, p. 1), but rather air-breathing, land snails belonging to the family Pupillidae. Based on this new information, the species is not currently considered to be extant at Three Forks Springs. Fortunately, the species continues to be abundant at Boneyard Bog Springs and Boneyard Creek Springs.

San Bernardino Springsnail

The San Bernardino springsnail was originally described as *Yaquicoccus bernardinus* by Taylor (1987, pp. 34–35) and later *Pyrgulopsis cochisi* by Hershler and Landye (1988, p. 41) from a spring in the San Bernardino Creek drainage, Cochise County, Arizona. The species was renamed *Pyrgulopsis bernardina* by Hershler (1994, pp. 21–22). We have reviewed the available taxonomic information (Landye 1973, p. 34; Landye 1981, p. 21; Hershler and Landye 1988, p. 41; Taylor 1987, p. 34; Hershler 1994, p. 21; Hurt 2004, p. 1176; Varela Romero and Myers 2010, p. 9), and conclude that San Bernardino springsnail is a valid taxon. The San Bernardino springsnail has a narrow-conic shell and a height of 0.05 to 0.07 in (1.3 to 1.7 mm). A detailed description of the identifying characteristics of the San Bernardino springsnail is found in Taylor (1987, pp. 35–35); Hershler and Landye (1988, p. 41), and Hershler (1994, pp. 21–22).

The historical range of the San Bernardino springsnail in the United States may have included several springs along the Rio San Bernardino (also known as San Bernardino Creek or Black Draw) within the headwaters of the Rio Yaqui in Cochise County, southern Arizona around 3,806 ft (1,160 m) elevation on what is now the San Bernardino National Wildlife Refuge (NWR) and the State-owned John Slaughter Ranch Museum, including Snail Spring, Horse Spring, Goat Tank Spring, and perhaps Tule Spring (Cox *et al.* 2007, pp. 1–2; Service 2007, pp. 82–83; Malcom *et al.* 2005, p. 75; Malcom *et al.* 2003, p. 2; Velasco 2000, p. 1). The current range of the species in the United States is now believed to be limited to two springs on the John Slaughter Ranch Museum, Goat Tank Spring and Horse Spring (Martinez 2010, p. 2) (Table 2). Surveys by SBNWR staff confirmed the presence of San Bernardino springsnails in Horse Spring in 2009 (Martinez 2010, p. 2). Also, Horse Spring is now known to be directly connected via an underground pipeline to Goat Spring (which is occupied by thousands of springsnails), so the liklihood of springsnails being at both sites is high.

The species was formerly collected and very abundant at Snail Spring on the John Slaughter Ranch Museum (Malcom *et al.* 2003, p. 17; Malcom *et al.* 2005, p. 74), but now appears to be extirpated having last been confirmed from that site in 2005 (Cox *et al.* 2007, p. 1; Malcom 2007, p. 1; Service 2007, p. 83; Martinez 2010, p. 1; Varela Romero and Myers 2010, p. 2).

TABLE 2—OCCUPANCY OF SAN BERNARDINO SPRINGSNAIL IN SPRINGS IN THE SAN BERNARDINO BASIN, ARIZONA, AND CAJÓN BONITO BASINS, MEXICO

Spring or springs complex	Number of springs	Currently occupied	Year of last verified occupancy
Goat Tank	1	Yes	2010.
Horse	1	Yes	2009.
Snail	1	No	2002.
Tule	1	No	Unknown.
Ojo El Chorro	At least 1	Yes	2010.
Los Ojitos	At least 1	Yes	2010.
Ojo El Ojito	At least 2	Yes	2010.
Ojo Agua Fria	At least 2	Yes	2010.
Ojo Caliente	At least 3	Yes	2010.

According to recent genetic studies, the San Bernardino springsnail occurs at five sites in Sonora, Mexico, in the San Bernardino and Cajón Bonito Basins, including Ojo El Chorro, Los Ojitos, Ojo El Ojito, Ojo Agua Fria, and Ojo Caliente (Liu and Hershler 2005, p. 293; Varela and Myers 2010, pp. 5–9). All five of these sites are located on privately owned ranches. The springs where the San Bernardino springsnail is found at these sites are typical ciénega ecosystems (wet, marshy areas at the foot of a mountain, in a canyon, or on the edge of a grassland where *groundwater* bubbles to the surface) occurring near 3,806 ft (1,160 m) in elevation (Minckley and Brunelle 2007, pp. 421–422), and most of the sites contain several springheads occupied by the species (Varela and Myers 2010, pp. 6–8) (Table 2).

Malcom *et al.* 2005 (pp. 71, 75–76) showed that density of San Bernardino springsnail was positively associated with cobble substrates, high vegetation density, faster water velocity, high dissolved oxygen, water temperatures ranging from 57 to 72 °F (14 to 22 °C), and pH values between 7.6 and 8.0. San Bernardino springsnail density exhibited positive relationships to sand and cobble substrates, vegetation density, and water velocity, and negative relationships to silt and organic substrates, and water depth (Malcom *et al.* 2005, pp. 75–76).

Limited information is available on population sizes for the San Bernardino springsnail. Malcom *et al.* (2003, p. 7; 2005, p. 74) estimated former average springsnail density as 66,893 per square yard (55,929 individuals per square meter) at Snail Spring from September 2001 to March 2002. The species formerly occurred in low population numbers at Goat Tank Spring, but has since exhibited an increase in abundance following the modification of a metal cover on the spring-box (Radke 2010, p. 1; Service 2011, pp. 117–118).

Summary of Factors Affecting the Three Forks Springsnail

Section 4 of the Act and implementing regulations at 50 CFR 424 set forth procedures for adding species to 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; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Wildfire and Suppression

Fire frequency and intensity in southwestern forests are altered from historical conditions (Dahms and Geils 1997, p. 34; Danzer *et al.* 1997, pp. 1–2). Before the late 1800s, surface fires generally occurred at least once per decade in montane forests with a pine component (Swetnam and Baisan 1996, p. 15), landscapes similar to those within which the Three Forks springsnail occurs. During the early 1900s, frequent widespread ground fires ceased to occur due to intensive livestock grazing that removed fine fuels, such as grasses. Coupled with fire suppression, changes in fuel load began to alter forest structure and natural fire regime (Dahms and Geils 1997, p. 34). An absence of low-intensity ground fires allowed a buildup of woody fuels that resulted in infrequent, but very hot, stand-replacing fires (fires that kill all or most of above-ground parts of dominant vegetation, changing the above-ground structure substantially) (Danzer *et al.* 1997, p. 9; Dahm and Geils 1997, p. 34).

In the past decade, USFS's lands around, or adjacent to, Three Forks springsnail habitats have been burned by wildfires, including the Three Forks Fire in 2004, and the Wallow Fire in 2011. These fires developed into hot crown fires (fires burning in tree canopies), while the Wallow Fire also exhibited very hot, stand-replacing effects. The lack of vegetation and forest litter following intense fires can expose soils to surface erosion during storms, often causing sedimentation and erosion in downstream drainages (DeBano and Neary 1996, pp. 70–75). This can cause infilling of substrates and shifts in water chemistry within spring systems.

We do not expect that surface erosion would have affected spring ecosystems occupied by Three Forks springsnail following the Three Forks Fire, because the spring areas did not burn. In contrast, most of the areas around Boneyard Bog and Boneyard Creek Springs, which are occupied by the species, were burned by the Wallow Fire in 2011, and these occupied springs are at risk from ash and sediment erosion during anticipated storm-water flows (USFS 2011a, pp. 65–69). We believe the species evolved with frequent low-intensity wildfire, and likely exhibits some resiliency. However, there is cause for concern as fire-induced changes in habitat for the Koster's springsnail (*Juturnia kosteri*) in New Mexico, resulted in lower springsnail densities post-fire (Lang 2002, pp. 5–7; NMDGF 2006, p. 9). Conversely, Sada and Vinyard (2002, p. 282) noted the presence of large populations of the springsnail *P. glibba* in recently burned springs in Nevada. Initial reports indicate that Three Forks

springsnails were not observed in at least one spring within Boneyard Bog Springs that was affected by recent flooding and ash debris (Sorensen 2011a, p. 1). Because the Wallow Fire exhibited very hot, stand-replacing effects, and it burned around the entirety of the only two spring complexes (consisting of several springs) known to be occupied by the species, additional storm-water flows are likely to cause erosion and sedimentation to flow into the springsnail's habitat, thus potentially resulting in the species' decline to the point of extinction.

Although the Three Forks Fire in 2004 did not directly burn Three Forks springsnail habitats, fire suppression included application of aerial fire retardants (chemicals used to suppress fire). Fire retardants may be toxic to springsnails if they enter the aquatic systems the snails occupy. Some fire retardant chemicals are ammonia-based, which are toxic to aquatic wildlife; however, many formulations also contain yellow prussiate of soda (sodium ferrocyanide), which is added as an anticorrosive agent. Such formulations are toxic for fish, aquatic invertebrates, and algae (Angeler *et al.* 2006, pp. 171–172; Calfee and Little 2003, pp. 1527–1530; Little and Calfee 2002, p. 5; Buhl and Hamilton 1998, p. 1598; Hamilton *et al.* 1998, p. 3; Gaikowkski *et al.* 1996, pp. 1372–1373). Toxicity of these formulations is enhanced by sunlight (Calfee and Little 2003, pp. 1529–1533). Contamination of aquatic sites can occur via direct application, wind drift, or runoff from treated uplands.

During the 2004 fire season, it is suspected that surface waters within the Three Forks Springs area were exposed to fire retardant that could have drifted from high-elevation retardant releases from aircraft (USFS 2005, pp. 4, 12). During fire suppression activities related to the Three Forks Fire, approximately 54,122 gallons (204,874 liters) of aerial fire retardant were applied from aircraft (USFS 2005, p. 4). The nearest documented release into a waterway was 0.65 mi (1.05 km) from Three Forks Springs, though other undocumented aerial releases in the area could have been closer. Available data indicate that the Three Forks springsnail was still abundant in spring sites at Three Forks Springs in 2002 and 2003, prior to the fire (AGFD 2008, entire; Martinez 2009, pp. 31–32), but has not been detected since that time. Although a definitive connection between extirpation and exposure to fire retardant drift has not been made, it is reasonable to assume that drift from the documented use of fire retardant chemicals during the 2004 fires caused retardant-related toxicity, and thus, the inability of surveyors to locate the species at Three Forks Springs since. Fortunately, the species still persists at Boneyard Bog Springs and Boneyard Creek Springs, but there is the potential for future wildfires to occur near these occupied sites. Because of the toxic effects to springsnails from aerial fire retardant chemicals and the potential for exposure during future wildfires, we consider the use of fire retardant chemicals to be a threat to the Three Forks springsnail in the foreseeable future.

Ungulates

High-intensity ungulate (hoofed-mammal) grazing on spring ecosystems can alter or remove springsnail habitat and limit the distribution of springsnails, or result in extirpation. For instance, cattle trampling at a spring in Owens Valley, California, reduced banks to mud and sparse grass, limiting the occurrence of the endangered Fish Slough springsnail (*Pyrgulopsis pertubata*) (Bruce and White 1998, pp. 3–4). Additionally, a population of Chupadera springsnail, (*P. chupaderae*), endemic to Socorro County, New Mexico, was extirpated due to the impacts of intensive livestock grazing on its habitat (Arritt 1998, p. 10; NMDGF 2006, p. 13). Even though other springsnails have been impacted by high intensity ungulate grazing, we do not consider it to be factor for the Three Forks springsnail. Livestock have been fenced out of the springs where the Three Forks springsnail occurs since the mid- to late 1990s.

Although fencing excludes livestock from springs where the Three Forks springsnail occurs (USFS 2011b, p. 184), free-ranging elk (*Cervus elaphus*) can access all the springs. Elk are able to jump or cross the fencing in ways that livestock cannot. Because elk have been able to access the springs, some habitat modification from elk wallowing has been observed by Service personnel (Martinez 2000, p. 1; Nelson 2002, p. 2). In 2007 and 2008, erosive soil conditions related to elk wallowing were documented at Boneyard Bog Springs (Myers 2007, p. 2; Martinez 2008, p. 1). Intensive elk wallowing causes muddy conditions, soil loss, sparse grass, and stagnant, rather than flowing, water. These habitat conditions created by elk wallowing are typically unsuitable for the Three Forks springsnail, because the springsnail are mostly found in habitats with gravel and pebble substrates, and shallow running water (Martinez and Myers 2008, pp. 189–194). It appears that elk wallowing prevents spring seepage from developing into free-flowing spring-runs, which is the preferred habitat of the Three Forks springsnail. Although elk wallowing is a factor that seems to be impacting the Three Forks springsnail's habitat, it is not occurring at a scale that would cause the extinction of Three Forks springsnail on its own. However, in combination with the other threats identified in this five-factor analysis, elk wallowing may be contributing to the species' risk of extinction by reducing its long-term viability. Importantly, the AGFD is partnering with the conservation community to implement habitat improvements for the Three Forks springsnail, including the construction of fenced elk exclosures around targeted spring sites (Sorensen 2011b, p. 1).

Springhead Inundation

Springhead inundation refers to pooling of water over a spring vent, resulting in ponded water (sometimes relatively deep) that would otherwise exist as shallow, free-flowing water. As noted above in the species description, the Three Forks springsnail was known to occur in ponded springboxes and the big pond at Three Forks, prior to extirpation. Although research indicates the species exhibits higher density in shallower water, the species does not appear to be intolerant of deeper ponded water. Thus springhead inundation is not a threat for this particular species because it persists in deeper water than many other springsnails.

Summary of Factor A: At this time, the primary threats to the only known occupied habitats of Three Forks springsnails are soil erosion resulting from the high-intensity Wallow Fire that occurred in 2011, and the potential exposure of fire retardant chemicals during future wildfires. Also, elk wallowing may be contributing to the species' risk of extinction by reducing its long-term viability. However, springhead inundation does not appear to be a threat. Based on the best available information, the present or threatened destruction, modification, or curtailment of the Three Forks springsnail's habitat and range poses a significant threat to the species' continued existence across its entire range now, and into the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Three Forks springsnail has been subjected to a limited number of

scientific studies aimed at determining taxonomy, distribution, and habitat use. Although sampling can reduce population size of springsnails (Martinez and Sorensen 2007, p. 29), studies have not resulted in the removal of large numbers of snails, and we do not believe they have had discernible effects on any population. Unauthorized collecting has been identified as a threat to other snails, including springsnails (65 FR 10033, February 25, 2000; 58 FR 5938, January 25, 1993; 56 FR 49646, September 30, 1991), due to their rarity, restricted distribution, and generally well-known locations. However, there is currently no documentation of collection being a significant threat to the Three Forks springsnail.

In summary, the best available information indicates that the Three Forks springsnail is not threatened by overutilization for commercial, recreational, scientific, or educational purposes now, and we do not have any information to indicate that this will likely become a significant threat in the foreseeable future in any portion of its range.

C. Disease or Predation

Exceptionally heavy parasitism on the female reproductive system of the Three Forks springsnail has been observed on specimens from the extirpated Three Forks Springs population (Taylor 1987, p. 31). However, we have no information that parasitism exists in the remaining Three Forks springsnail populations at Boneyard Creek Springs and Boneyard Bog Springs.

In general, springsnails are vulnerable to predation by a variety of fish, amphibians, reptiles, mammals, and macroinvertebrates (Dillon 2000, p. 273; Raisanen 1991, p. 71). Nonnative crayfish are known predators of aquatic snails (Fernandez and Rosen 1996, pp. 24–25; Parkyn *et al.* 1997, p. 690), and are relatively recent invaders of Three Forks springsnail habitats. In a laboratory aquaria experiment that mimicked stream conditions found at Three Forks Springs, crayfish consumed snails and their eggs in the family Physidae (which occupy similar habitats as springsnails) within 1 week of introduction (Fernandez and Rosen 1996, pp. 24–25).

Prior to total extirpation at Three Forks Springs, Three Forks springsnails were no longer being found in concrete-boxed springheads where they had previously been observed in abundance (Myers 2000, p. 1; Martinez and Myers 2008, p. 191). The localized extirpation of the species from concrete-boxed springheads coincided with an invasion by nonnative crayfish. Because Arizona has no native crayfish species (Inman 1999, p. 6), the Three Forks springsnail likely did not evolve in the presence of crayfish predation. Therefore, the springsnail probably does not have an evolutionary mechanism to escape this type of predation. Recognizing the impact that nonnative crayfish were having on the Three Forks springsnail, AGFD personnel conducted an intensive crayfish trapping program aimed at reducing predatory pressure at Three Forks Springs (Nelson *et al.* 2002, pp. 4, 6). However, complete elimination of crayfish from an aquatic system is usually not possible (Helfrich *et al.* 2001, p. 4). This has been the case with the trapping effort at Three Forks Springs. More recently, crayfish have also been found in Boneyard Creek Springs and Boneyard Bog Springs. These efforts have not eliminated crayfish or prevented their spread along Boneyard Creek.

In summary, parasitism is not currently known to be a threat to the Three Forks springsnail, but this factor may need to be investigated further considering that it was observed on specimens in the past, and it has the potential to contribute to population declines (Dillon 2000, pp. 270–272). At this time, we have no information to indicate that parasitism is occurring within the remaining populations or that it might occur at a level in the future that affects the species' continued existence. On the other hand, we consider predation by nonnative crayfish to be a threat to the Three Forks springsnail across its entire range, because the springsnail has been locally extirpated from concrete-boxed springheads after the nonnative crayfish invaded.

D. The Inadequacy of Existing Regulatory Mechanisms

The primary causes of the Three Forks springsnail's decline are soil erosion following high-intensity wildfire, application of aerial fire retardant, and predation by nonnative crayfish. Existing Federal, State, and local laws have been unable to prevent loss of habitat or populations, and the existing regulatory mechanisms are not expected to prevent causes of Three Forks springsnail decline in the future.

The policy for delivery of wildland fire chemicals near waterways on USFS lands is described in the Interagency Standards for Fire and Fire Aviation Operations, developed by the National Interagency Fire Center (NIFC; NIFC 2011). The policy directs the USFS to avoid aerial application of wildland fire chemicals within 300 ft (91 m) of waterways, and avoid any ground application of wildland fire chemicals into waterways (NIFC 2011, p. 3). The closest accidental delivery of fire retardant into a waterway was approximately 0.65 mi (1 km) upstream of Three Forks Springs (USFS 2005, p. 12), well over the 300-ft (91-m) buffer established by NIFC policy. Nevertheless, aquatic areas at Three Forks are suspected to have been affected by fire retardant drift.

In addition to the 300-ft (91-m) buffer, the USFS recently adopted a policy of establishing avoidance areas specifically for listed species (USFS 2011c, p. 6). Although the implementation of an avoidance zone will likely reduce the probability of exposure to aerial fire retardants, it cannot entirely eliminate the possibility of an accidental catastrophic event. Furthermore, although fire retardants containing sodium ferrocyanide are no longer used, USFS (2011c, pp. 121–123) acknowledges that fire retardants currently in use still contain substances toxic to aquatic invertebrates, including mollusks.

Take of the Three Forks springsnail is regulated by Arizona Game and Fish Commission Order 42, which establishes no open season (no collecting) for any snail species in the genus *Pyrgulopsis* (AGFD 2010, p. 29). Although Order 42 prohibits direct taking of individuals, it does not prohibit habitat modification. The species is also identified as a priority species in the State Wildlife Action Plan prepared by AGFD (AGFD 2006, pp. 136, 419). This plan helps guide AGFD and other agencies in determining what biotic resources should receive priority management consideration, but this plan is not legally binding on any agency.

In summary, current regulatory mechanisms are inadequate to protect Three Forks springsnail habitat from modification or destruction due to the threats of accidental application of aerial fire retardant. The USFS and State regulatory mechanisms are adequate to control scientific collecting, but this does not appear to be a threat to the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Invasive Competitors

The nonnative New Zealand mudsnail (*Potamopyrgus antipodarum*) is an invasive freshwater snail of the family Hydrobiidae that has become a concern for spring-dependent aquatic snails, including springsnails. The mudsnail is known to compete with and slow the growth of native freshwater snails,

including springsnails (Lysne and Koetsier 2008, pp. 103, 105; Lysne *et al.* 2007, p. 6). There is potential for mudsnail invasion into spring ecosystems, because the mudsnail can be easily transported and unintentionally introduced into aquatic environments via birds, hikers, researchers, and resource managers.

The mudsnail was first discovered in the United States in the Snake River, Idaho, in 1987, and has since spread to the Colorado River basin in the western United States (U.S. Geological Survey 2002, p. 1). Mudsnails were discovered in Utah in 2001, and since have dispersed rapidly through that State (Vinson 2004, p. 9). Since 2002, New Zealand mudsnails have been detected in Arizona along the Colorado River at Lees Ferry, Diamond Creek, Lake Mead, and Willow Beach Fish Hatchery (AGFD 2002, p. 1, Olson 2008, pp. 1–2, Montana State University 2008, p. 1, Sorensen 2010, p. 3).

The mudsnail has characteristics that enable it to out-compete and replace native springsnails. Mudsnails tolerate a wide range of habitats, and can reach densities exceeding tens of thousands per square meter, particularly in systems with high primary productivity (system with organisms that create organic molecules that serve as food for other organisms), constant temperatures, and constant flow (typical of spring systems), though faster moving water seems to limit colonization (Richards *et al.* 2001, pp. 378–379). Mudsnails can dominate the invertebrate composition of an aquatic system, accounting for up to 97 percent of invertebrate biomass (Hall *et al.* 2003, p. 409). In doing so, they can consume nearly all microorganisms attached to submerged substrates, making food no longer available for native species, such as springsnails (Hall *et al.* 2003, p. 409).

Invasion by mudsnails is not a current threat to the Three Forks springsnail. However, the New Zealand mudsnail is spreading throughout the State of Arizona. If they were to be introduced into the spring systems harboring the Three Forks springsnail, the effect could be devastating. Additionally, control would be difficult because mudsnails are small and cryptic, and chemical treatment to eradicate them would also eradicate springsnails. Because the New Zealand mudsnail can out-compete and replace native springsnails, we consider this nonnative competitor to be a potential threat to the Three Forks springsnail's continued existence in the foreseeable future.

Climate Change and Drought

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

The Intergovernmental Panel on Climate Change (IPCC 2007, p. 7) summarized the likelihood of future trends in global climatic variables over most land areas, predicting: (1) Warmer and fewer cold days and nights, (2) warmer and more frequent hot days and nights, (3) more frequent warm spells and heat waves or both, (4) changes in precipitation patterns favoring an increased frequency of heavy precipitation events, and (5) an increase in area affected by drought. These global climate changes are expected to influence climatic patterns at regional and local scales.

At a regional scale, there is broad consensus among climate models that the southwestern United States and northern Mexico will become drier in the twenty-first century and that the trend is already underway (Seager *et al.* 2007). Seager *et al.* (2007, pp. 1181–1184) analyzed 19 computer models of different variables to estimate the future climatology of the southwestern United States and northern Mexico in response to predictions of changing climatic patterns. All but 1 of the 19 models predicted a drying trend, while 1 predicted a trend toward a wetter climate (Seager *et al.* 2007, p. 1181). A total of 49 projections were created using the 19 models, and all but 3 predicted a shift to increasing aridity (dryness) in the southwestern United States as early as 2021–2040 (Seager *et al.* 2007, p. 1181). Wetlands in the southwestern United States and northern Mexico are predicted to be at risk of drying (Seager *et al.* 2007, pp. 1183–1184), which has severe implications for aquatic ecosystems.

The current, multiyear drought in the southwestern United States is the most severe drought recorded since 1900 (Overpeck and Udall 2010, p. 1642). Numerous models predict a decrease in annual precipitation in the southwestern United States and northern Mexico. Solomon *et al.* (2009, p. 1707) predicted precipitation in the southwestern United States and northern Mexico will decrease by 9 to 12 percent. Christensen *et al.* (2007, p. 888) contend the projection of smaller warming over the Pacific Ocean than over the continent is likely to induce a decrease in annual precipitation in the southwestern United States and northern Mexico.

Maximum summer temperatures in the southwestern United States are expected to increase over time in response to changes in the climate system (Christensen *et al.* 2007, p. 887). Weiss and Overpeck (2005, p. 2075) examined low-temperature data over a 40-year timeframe from numerous weather stations in the Sonoran desert ecoregion and found: (1) Widespread warming trends in winter and spring, (2) decreased frequency of freezing temperatures, (3) lengthening of the freeze-free season, and (4) increased minimum temperatures per winter year. Additionally, the timing of precipitation may be altered, contributing to significant changes in vegetation communities. The IPCC (2007, p. 20) found that winter precipitation in the southwestern United States is predicted to decline by as much as 20 percent as a result of climate change, while summer precipitation may increase slightly.

Arid environments can be especially sensitive to climate change, because the biota that inhabit these areas are often near their physiological tolerances for temperature and water stress. Slight changes in temperature and rainfall, along with increases in the magnitude and frequency of extreme climatic events, can significantly alter species distributions and abundance (Archer and Predick 2008, p. 23). Nonnative plant species may respond positively, out-competing native vegetation (Smith *et al.* 2000, p. 79; Lioubimsteva and Adams 2004, p. 401), thereby increasing the risk of wildfire. Seasonal changes in rainfall may contribute to the spread of

invasive species, which are often capable of explosive growth, and able to out-compete native species (Barrows *et al.* 2009, p. 673).

There are three hydrologic predictions for anticipated effects from climate change in the southwestern United States. First, climate change is expected to shorten periods of snowpack accumulation, as well as lessen snowpack levels. With gradually increasing temperatures and reduced snowpack (due to higher spring temperatures and reduced winter-spring precipitation), annual runoff will be reduced (Garfin 2005, p. 42; Smith *et al.* 2003, p. 226), consequently reducing groundwater recharge. Second, snowmelt is expected to occur earlier in the calendar year, because increased minimum winter and spring temperatures could melt snowpacks sooner, causing peak water flows to occur much sooner than the historical spring and summer peak flows (Garfin 2005, p. 41; Smith *et al.* 2003, p. 226; Stewart *et al.* 2004, pp. 217–218, 224, 230), and reducing flows later in the season. Third, the hydrologic cycle is expected to become more dynamic on average with climate models predicting increases in the variability and intensity of rainfall events. This will modify disturbance regimes by changing the magnitude and frequency of floods. Warmer water temperatures, altered stream flow events and groundwater recharge, and increased demand for water storage and conveyance systems (Rahel and Olden 2008, pp. 521–522) may alter spring habitats by altering surface water flow and ground water supply.

In addition, increases in riverine system temperatures in drier climates will result in periods of prolonged low flows and stream drying (Rahel and Olden 2008, p. 526), and will increase demand for water storage and conveyance systems (Rahel and Olden 2008, pp. 521–522). Warmer water temperatures across temperate regions are predicted to expand the distribution of existing aquatic nonnative species. In a study that compared the thermal tolerances of 57 fish species with predictions made from climate change temperature models, Mohseni *et al.* (2003, p. 389) concluded that there would be 31 percent more suitable habitat for aquatic nonnative species, which are often tropical in origin and adaptable to warmer water temperatures. This could result in an expansion in the ranges of nonnative aquatic species to the detriment of native species.

Climate change and drought could eventually exacerbate existing threats to spring habitats in the southwestern United States. Increased and prolonged drought associated with changing climatic patterns could adversely affect spring habitats by reducing water availability, and altering food availability and predation rates. Drying of spring flow is of particular concern because springsnails depend on permanent flowing water for survival. At this time we have no specific information indicating that any springs occupied, or formerly occupied, by the Three Forks springsnail have experienced a decline in water flow due to climate change or drought. However, the best available information indicates that climate change and drought may be a factor in the foreseeable future that could adversely alter the Three Forks springsnail's habitat. Therefore, the potential impacts from climate change and drought could affect the Three Forks springsnail's continued existence in the future.

Endemism

Endemic species (organisms with narrowly distributed isolated populations) are often more susceptible to extinction from localized, catastrophic events. Biological and ecological factors that put a species at risk of extinction include specialized habitat preference, restricted distribution, poor dispersal ability, population size, fragmentation of range, and life history specialization (McKinney 1997, p. 497; O'Grady *et al.* 2004, p. 514). The Three Forks springsnail is a highly endemic species. It occurs only within two spring complexes with a very restricted distribution, has limited mobility, and is a strict aquatic specialist requiring spring systems to complete its life history function. Endemism is not a threat in and of itself, but the Three Forks springsnail's endemic nature may make them more vulnerable to extinction from other existing or potential threats. The remaining populations of Three Forks springsnail are less than 1 mi (1.6 km) apart, and their total overall range is approximately 11.1 ac (4.5 ha) in size. Because their range is so small, one catastrophic event, such as a high-intensity wildfire, could potentially result in the entire loss of the species.

Listing Determination for the Three Forks Springsnail

Section 3 of the Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species that ''is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' We find that the Three Forks springsnail is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and extent of the threats described above. We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the species, and have determined that the Three Forks springsnail meets the definition of endangered under the Act, rather than a threatened species, because significant threats are occurring now and in the foreseeable future, at a high magnitude, and across the species' entire range, making the species in danger of extinction at the present time.

Based on the best scientific and commercial information available regarding the threats to the species, we have found that some serious threats are occurring now, while some will negatively impact the species in the foreseeable future. For instance, the high-intensity 2011 Willow Fire that burned around the only remaining populations of the Three Forks springsnail has caused the habitat of the species to be currently threatened with destruction, modification, and curtailment due to soil erosion and sedimentation during storm events. Also, we have found that predation by nonnative crayfish is currently threatening the Three Forks springsnail across its entire range. In addition to the current threats, the Three Forks springsnail is also at a high risk of extinction due to threats that could affect the species in the foreseeable future, such as the use of fire retardant chemicals during future wildfires, the potential spread and competition with New Zealand springsnails, and the potential for climate change and drought to dry its springhead habitat. Due to its endemic nature, the Three Forks springsnail may be more vulnerable to extinction from both present and future threats.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. We find that the threats to the Three Forks springsnail occur at relatively high magnitudes throughout its entire range. Historically, the Three Forks springsnail is known to have occurred in numerous springs and seeps along Boneyard Creek and its confluence with the North Fork East Fork Black River in the White Mountains on the Apache-Sitgreaves National Forests, in Apache County, Arizona. In recent years, the species'

range has been reduced to the point that it has only been found at two spring complexes. These two remaining sites are restricted to less than 1 mi (1.6 km) along Boneyard Creek. Because the species is so limited in range, the magnitude of threats that are occurring now are high, and those that may impact the species in the foreseeable future are high as well. For example, one catastrophic event, such as a high-intensity wildfire, could potentially result in the entire loss of the species. Accordingly, our assessment and determination applies to the species throughout its entire range. In conclusion, based on the immediacy, severity, and extent of the threats, we have determined that the Three Forks springsnail meets the definition of endangered under the Act.

Summary of Factors Affecting the San Bernardino Springsnail

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Wildfire and Suppression

Wildfires are common in southern Arizona along the border with Mexico (U.S. Government Accountability Office 2011, pp. 9–12), though we have limited information on wildfire frequency or intensity in the San Bernardino or Cajón Bonito Basins where the San Bernardino springsnail occurs. Even so, nonnative buffelgrass (*Pennisetum ciliare* [= *Cenchrus ciliare*]) is a concern, because of its potential to occur in this area and its ecological effects related to wildfire. Since its introduction in the 1940s, buffelgrass has become widespread in southeastern Arizona and northeastern Sonora, Mexico (Stevens and Falk 2009, p. 417; Van Devender and Reina 2005, p. 161; Cohn 2005, pp. 1–2, Yetman 1994, pp. 1, 8). The introduction of this invasive species is known to result in the addition of fire as an ecological process in the normally fire-intolerant Sonoran desert ecosystems, changing the natural fire regime from infrequent, low-intensity, localized fires, to frequent, high-intensity, spreading fires (Van Devender and Reina 2005, p. 161; Stevens and Falk 2009, p. 418; Yetman 1994, pp. 8–9).

Buffelgrass has been documented up to 4,150 ft (1,265 m) in elevation (Arizona Sonora Desert Musuem 2012, p. 2), but because it is frost-intolerant, it is usually limited to elevations less than 3,300 ft (1,000 m) (Perramond 2000, p. 5). All the sites where the San Bernardino springsnail is found in both the United States and Mexico are near or above 3,806 ft (1,160 m) in elevation, suggesting that most spring sites where the springsnail occurs may be protected from buffelgrass invasion. However, climatic warming trends (see Climate Change discussion, below) may facilitate future invasion by buffelgrass, increasing the potential for high-intensity wildfire around spring sites occupied by San Bernardino springsnail. At this time, the best available information indicates that wildfire is not a current threat to the species. We have no information relating to actual impacts of wildfire on the San Bernardino springsnail or its habitat.

If a wildfire were to occur in the greater San Bernardino Basin, Arizona, we suspect suppression efforts in the United States could include the application of fire retardant chemicals via aircraft, because this is one of the methods typically used to fight wildfires in this region. Should San Bernardino springsnails be exposed to fire retardants, we would expect them to react negatively, for the same reasons discussed under Factor A of the Three Forks springsnail, above. Wind drift of fire retardant has been noted in an unconfirmed report up to five miles from a drop site. So if there were a fire in the San Bernardino Valley, and the U.S. used retardant tankers, drift of the chemicals might reach San Bernardino springsnail sites in Mexico, although we have no confirmation of this occurring.

Further, we have no information indicating that aerial fire retardants have been used in the area around the two spring sites at the John Slaughter Ranch Museum. We anticipate the probability of exposure to fire retardant to be low, because the two spring sites are surrounded by a substantial area of well-tended lawn turf, and this area is unlikely to burn. Should there be a fire near the John Slaughter Ranch Museum, we expect that conventional fire-fighting techniques, utilizing fire engines and ground-based suppression activities, would most likely be employed in fighting any fires near the two springs. Further, concerning the populations of San Bernardino springsnails recently discovered in Sonora, Mexico, we expect that similar on-the-ground fire-fighting techniques would be employed, as opposed to the application of fire retardant chemical from aircraft. However, there is a possibility that wildfire may occur in the San Bernardino Basin at some point in the future, and fire retardant exposure could happen. As such, exposure to fire retardant chemicals, especially exposure resulting from wind drift, could represent a threat to the species in the future.

Controlled Burning

Varela Romero and Myers (2010, pp. 7, 10) indicate that the Los Ojitos ciénega in Sonora, Mexico, has been exposed to fire intentionally set to control cattails (*Typha* sp.). They noted ash and loss of water flow post-fire, and could not locate springsnails in an area where springsnails had occurred a few months prior (Varela Romero and Myers, 2010, p. 7). As noted above, fire-induced changes in spring habitats can result in lower springsnail densities post-fire (Lang 2002, pp. 5–7; NMDGF 2006, p. 9). Although the available information is unclear regarding the relationship between fire at Los Ojitos and springsnail population viability, it appears that a controlled burn may have contributed to a decrease in springsnail abundance. It is premature to conclude that the species has been extirpated from Los Ojitos, considering that survey efforts have been limited and the genus appears to exhibit some resiliency to fire. Controlled burns are probably low-intensity wetland fires that do not exhibit the same effects as very hot, high-intensity, stand-replacing fires. Also, it is not clear if controlled burning is a regular management tool employed by the landowner that we can reasonably anticipate will reoccur with any frequency. However, controlled burning does seem likely to reoccur, considering that management of cattails with fire requires regular treatment. Although controlled burning likely impacts the species, we are unable to determine the long-term impacts on the San Bernardino springsnail or its habitat. We do not have any additional information on controlled burning at any other locality where San Bernardino springsnail occurs.

Ungulates

The general effects of ungulate grazing on springsnails and their habitats are discussed under Factor A for the Three Forks springsnail. As previously noted, high-intensity ungulate grazing at spring ecosystems can alter or remove springsnail habitat and limit the distribution of springsnails, or result in their extirpation (Arritt 1998, p. 10; Bruce and White 1998, pp. 3–4; NMDGF 2006, p. 13). For the San Bernardino springsnail, we do not consider ungulate grazing to be a threat. Cattle grazing does not currently occur on the San Bernardino NWR. A small number of cattle graze on the John Slaughter Ranch Museum, but they do not have access to spring sites. Horse Spring is located in a horse pen (Martinez 2010, p. 2), but it is unclear what effect, if any, the horses have on the spring. Low-

intensity cattle grazing does occur on the private ranches in Mexico, but the cows are removed from areas if they start impacting an area (Cuenca Los Ojos 2012, p. 1; Bodner 2005, p. 6). The San Bernardino Valley historically supported extensive cattle ranching (Hendrickson and Minckley 1984, pp. 142–144; Service 2007, pp. iii–iv), and livestock likely had access to all spring habitats within the Rio San Bernardino watershed at that time. At this time, we do not consider ungulate grazing to be a threat to the San Bernardino springsnail, because there is no information that the limited exposure of cattle grazing within the springsnail's range is affecting the species' continued existence.

Springhead Inundation

Springhead inundation refers to pooling of water over a spring vent, resulting in ponded water (sometimes relatively deep) that would otherwise exist as shallow, free-flowing water. As previously noted, the San Bernardino springsnail is mainly found near spring vents and in association with shallow water, but high velocity. Inundation can alter springsnail habitats by causing shifts in water depth, velocity, substrate composition, vegetation, and water chemistry. These changes in springhead habitat can cause reductions in the San Bernardino springsnail's distribution and abundance.

Springhead inundation has affected the San Bernardino springsnail's habitat on the John Slaughter Ranch Museum. Cox *et al.* (2007, p. 1) speculated that the species previously occurred in the springs now inundated by House Pond. But, we have no evidence to confirm that they actually occurred in these springs, nor do we have information that they currently exist in the pond. As such, we cannot verify that inundation has affected the species there. However, because the San Bernardino springsnail currently exists in Goat Tank and Horse Springs, which both are within several hundred feet (meters) of House Pond, it is reasonable to assume that the San Bernardino springsnail occurred in the springs now inundated by House Pond. Thus, based on the altered habitat caused by inundation, it is reasonable to assume that inundation does affect the species' continued existence in such areas.

Springs in Sonora, Mexico, appear to have been impounded, including springs at Los Ojitos ciénega and Ojo El Chorro (Varela Romero and Myers 2010, pp. 6, 7, 10). But fortunately, springsnails have been found in spring-runs draining into impounded ponds and in the outflows at these sites. Because springsnails seem to prefer flowing, rather than pooled water, it is possible that impoundments have affected the species at these sites. Springhead inundation appears to be a threat that has altered the San Bernardino springsnail's habitat in the past, but at this time we do not consider this threat to be ongoing. However, because of its ability to alter the springsnail's preferred habitat in such a way that could affect the species continued existence, springhead inundation could be a threat to the San Bernardino springsnail in the foreseeable future.

Water Depletion and Diversion

Spring ecosystems rely on water discharged at the surface from underground aquifers, and depletion of the underground aquifers can result in the drying of springs. The drying of springs can be severe for springsnails, because they are strictly aquatic organisms. Groundwater depletion has been recognized as a threat to the continued existence of other biota occurring in the Rio San Bernardino and associated springs, such as the Yaqui fishes (49 FR 34490, August 31, 1984; Service 1994, p. 17). Several populations of San Bernardino springsnail are believed to have been extirpated as water was depleted and diverted for domestic water use (Landye 1973, p. 34; Malcom *et al.* 2003, p. 2), though the springsnail's actual occurrence in these springs prior to desiccation was never verified by field surveys.

Two distinct aquifers exist in the San Bernardino Valley basin, one deep and the other shallow (Earman *et al.* 2003, p. 35). These aquifers exhibit different chemical and thermal properties. Many of the springs in the area are influenced by both the deep and the shallow aquifers (Earman *et al.* 2003, p. 166; Malcom *et al.* 2005, pp. 75–76). House Spring, Snail Spring, and Goat Tank Spring have different chemical compositions from one another, as well as from other springs in the area (Earman *et al.* 2003, p. 166). A study using radioactive isotopes to trace water flow into the springs indicated that some springs appear to be fed by the deep aquifer, some by the shallow aquifer and groundwater, and others are influenced by a mixing of the two water sources (Earman *et al.* 2003, p. 166).

The John Slaughter Ranch Museum has an irrigation system that relies on the shallow aquifer and surface water from House Pond to provide water for turf grass and a cattle pasture (Malcom *et al.* 2003, p. 18; Malcom 2007, p. 1; Cox *et al.* 2007, p. 2). Malcom (2007, p. 1) and Cox (2007, p. 1) both reported a visible decline in flow from Snail Spring and Tule Spring when this irrigation system was running. This indicates that House Pond is hydrologically connected to Snail Spring and Tule Spring. However, we have no hydrologic data verifying that this is the case. Regardless, Snail Spring no longer discharges flowing water from the springhead, and the San Bernardino springsnail is now extirpated from that site (Martinez 2010, p. 1; Varela Romero and Myers 2010, p. 2).

The cessation of water flow at Snail Spring dates back to 2002. Following several years of below-average precipitation, Arizona faced extreme drought during 2002, which was the driest year on record for many parts of the State (McPhee *et al.* 2004, p. 1). At that time, the San Bernardino NWR staff and the John Slaughter Ranch Museum manager tapped into the domestic water supply from House Spring to try to maintain the springsnail's habitat at Snail Spring (Smith 2003, p. 1; Malcom 2003, p. 18; Malcom 2007, p. 1). Use of this domestic water supply for maintaining springsnail habitat was intended as an emergency measure only, and ultimately could not be sustained. Since 2002, surface flows at Snail Spring were periodically augmented by water diverted from House Pond. Unfortunately, consistent water flow has not been maintained at Snail Spring since 2005, and the San Bernardino springsnail has not been found at that site since then (Cox *et al.* 2007, p. 1; Malcom 2007, p. 1; Service 2007, p. 83; Martinez 2010, p. 1).

The Service has the right to control the use of water on the John Slaughter Ranch Museum, through a warranty deed that reserves water rights to The Nature Conservancy (TNC 1982, pp. 1–20). The Nature Conservancy deeded the water rights on the John Slaughter Ranch Museum to the Service, but also deeded ''water use'' rights to the John Slaughter Ranch Museum itself, with a stipulation that the ranch use should not adversely affect wildlife. Therefore, the Service can withhold its consent for planned water uses and other activities by the owner and managers of the John Slaughter Ranch Museum if it determines that such activities may have an adverse effect on the fish and snail species occurring on the ranch. However, such action appears unnecessary at this time, as the San Bernardino NWR is proactively working with the John Slaughter Ranch Museum to moderate use of irrigation water and to find an alternative water source to restore flow at Snail Spring. To offset the John Slaughter Ranch Museum's

domestic water supply from House Spring, the San Bernardino NWR is working with the ranch to moderate use of irrigation water and to find an alternative water source to restore flow at Snail Spring. Two wells were drilled during December 2011 that are helping with restoration of flow at the spring. One well, a shallow well at the head of Snail Spring on the Slaughter Ranch, directly supplements Snail Spring to provide year round habitat for the springsnail. A second (off-site) deep well, located on San Bernardino NWR adjacent to Slaughter Ranch, will be used to augment the amount of water available for domestic water needs at Slaughter Ranch (Arizona Department of Water Resources 2012, p. 1; Service 2012, p. 1). Preliminary analysis indicates that water quality between the well and Snail Spring is similar (Service 2012, p. 1).

In 2010, loss of water flow was noted and reported for the Los Ojitos ciénega in Sonora (Varela Romero and Myers 2010, p. 7). The factors contributing to the loss of flow at that site are unknown, and may include manipulation of water control devices by land managers or extended drought conditions. We do not know if this loss of flow at Los Ojitos is temporary or permanent. At another site occupied by the San Bernardino springsnail, Varela Romero and Myers (2010, p. 10) noted water flow interruption at Ojo El Chorro and recommended monitoring of groundwater pumping and water diversions to determine if these were causing flow water loss. The water flow interruption at Ojo El Chorro must not be severe, because Varela Romero and Myers (2010, p. 10) reported a functioning spring system at that site. Water harvesting efforts (construction of structures that capture stormwater runoff) are ongoing on the Austin Ranch in the San Bernardino watershed in Mexico (Cuenca de Los Ojos 2012, entire). However, water depletion is still a threat to spring ecosystems throughout the watershed (Earman *et al.* 2003, p. 259; Earman *et al.* 2008, p. 15; Hadley 2006, p. 13; Varela-Romero and Myers 2010, p. 10).

We have no information indicating that other springs in the San Bernardino or Cajón Bonito Basins where the San Bernardino springsnail occurs have experienced water loss or reduced water flow. However, the San Bernardino ground water table is a desirable domestic water source, particularly in Mexico, and ground water use could eventually have severe negative consequences on the viability of springs and wetlands in the San Bernardino watershed (Earman *et al.* 2003, p. 259; Earman *et al.* 2008, p. 15; Hadley 2006, p. 13). Water depletion from future groundwater use could eventually contribute to the drying of springs throughout the range of the San Bernardino springsnail, placing the species at increased risk of extinction.

Pesticides

Pesticides, including glyphosate, the active ingredient in the herbicides Roundup® and Rodeo®, have been reportedly used adjacent to spring ecosystems on the John Slaughter Ranch Museum (Malcom *et al.* 2003, p. 17; Service 2005, p. 6). Spring endemic species are typically adapted to the unique environmental conditions provided by spring water and may be quite sensitive to shifts in water quality (Hershler 1998, p. 11), including those caused by contamination.

In the proposed rule, we discussed results presented by Tate *et al.* (1997, pp. 287–288) indicating that long-term exposure to glyphosate in a laboratory affected growth and development, egg-laying capacity, and hatching of the mimic lymnaea (*Pseudosuccinea columella*), an unrelated freshwater snail. As such, we were concerned that sublethal, as well as lethal, effects from the use of glyphosate or other pesticides used on the John Slaughter Ranch Museum may be affecting the San Bernardino springsnail. However, upon further evaluation, we found that, for freshwater mollusks, the aquatic formulation of glyphosate (Rodeo®) has an ecotoxicity rating of Class 0 (practically nontoxic), while the nonaquatic formulation (Roundup®) has a rating of Class 1 (slightly-to-moderately toxic) (White 2007, pp. 158, 198). Although glyphosate can be slightly-to-moderately toxic to aquatic organisms, particularly zooplankton (Montenegro-Rayo 2004, p. 34), and impacts including mortality have been documented in other snail species, Tate *et al.* (1997, pp. 287–288) found that glyphosate stimulates growth and development of snails at different concentrations. Normal use of glyphosate is not expected to detrimentally affect aquatic biota.

In the proposed rule, we also presented our concern that the pesticide may contaminate the food base for the springsnail. Upon further review, we find contamination of the food base to be unlikely. Glyphosate adsorbs strongly to sediments and soils, and would not be expected to leach to surface waters at high levels through surface runoff (USEPA 2008, pp. 8, 25). Although direct exposure from spray drift is a possibility, we do not anticipate adverse effects to the San Bernardino springsnail or its food base, because long-term exposure is unlikely to occur in a natural spring setting, as flowing water should allow for dissipation. Accordingly, we do not consider the proper use of the pesticide to threaten the San Bernardino springsnail's continued existence.

Sunlight Inhibition

Goat Tank Spring box is covered with a heavy metal lid that previously prevented significant sunlight penetration. The San Bernardino springsnail formerly occurred in very low population numbers at Goat Tank Spring, but has exhibited an increase in abundance following the modification of this cover to allow sunlight to enter the spring-box (Radke 2010, p. 1, Service 2011, pp. 117–118). Although this effort has successfully resulted in an increase in the abundance of springsnails, a large portion of the spring-box is still covered. The lack of direct sunlight into the aquatic environment likely inhibits primary production resulting in reduced availability of periphytic diatoms and algae, key habitat elements required by the San Bernardino springsnail. Radke (2010, p. 1) noted that the side of the spring-box, where the modified lid allows more light to enter, had a larger number of snails than the dark side of the spring-box. Although we do not believe this situation will result in the loss of the springsnail population at Goat Tank Spring, the continued maintenance of this lid likely prevents the population from realizing its full potential productivity.

Summary of Factor A: We have identified a number of impacts to the San Bernardino springsnail's habitat, which have operated in the past or that could impact the species in the foreseeable future. On the basis of this analysis, the potential use of fire retardant chemicals to fight wildfires, springhead inundation, and water depletion and diversion could result in destruction, modification, or curtailment of the San Bernardino springsnail's habitat throughout all of its range in the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational

Purposes

Like the Three Forks springnsail, the San Bernardino springsnail has been subjected to a limited number of scientific studies aimed at determining taxonomy, distribution, and habitat use. The impacts to springsnails from collection are described under Factor B for the Three Forks springsnail. At this

time, there is no documentation of collection being a significant threat to the San Bernardino springsnail.

In summary, the best available information indicates that the San Bernardino springsnail is not threatened by overutilization for commercial, recreational, scientific, or educational purposes now, and we do not have any information to indicate that this will likely become a significant threat in the foreseeable future in any portion of its range.

C. Disease or Predation

We have no information regarding parasites on the San Bernardino springsnail. Also, we are unaware of the presence of nonnative predators within springs occupied by the San Bernardino springsnail. Field surveys have not detected the presence of nonnative crayfish within springs occupied by the San Bernardino springsnail, nor or we aware of any information indicating that crayfish have or will potentially invade the watersheds where the springsnail occurs. Additionally, current management activities are conducted on the private, State, and Federal lands to prevent the spread of nonnative species. Therefore, we do not consider disease or predation to be threats to the San Bernardino springsnail, now or in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

In the proposed rule, we found the label restriction on Rodeo® (glyphosate) inadequate to protect the San Bernardino springsnail, because it does not restrict use within and near aquatic sites (DowAgroSciences 2006, p. 11). However, the low toxicity rating (as noted above in the Factor A discussion), and the fact that Rodeo® is an aquatic formulation, explains the lack of restrictions near aquatic sites. As such, we find the label restriction is adequate to protect the springsnail. Even so, Rodeo® still has the potential to negatively impact the springsnail if misused, but we have no evidence that it is being misused or is impacting the species. Although glyphosate is believed to be used on the John Slaughter Ranch Museum property, we have no reliable information regarding user application practices that would lead us to believe this pesticide is a threat to the San Bernardino springsnail.

Take of the San Bernardino springsnail is regulated by Arizona Game and Fish Commission Order 42, which establishes no open season (no collecting) for any snail species in the genus *Pyrgulopsis* (AGFD 2010, p. 29). Although Order 42 prohibits direct taking of individuals, it does not prohibit habitat modification. The species is also identified as a priority species in the State Wildlife Action Plan prepared by AGFD. This plan helps guide AGFD and other agencies in determining what biotic resources should receive priority management consideration. However, this plan is not legally binding on any agency.

In Mexico, the Secretaria de Medio Ambiente y Recursos Naturales has authority to designate species as threatened, or ''Amenzadas,'' based on recommendations from the Instituto Nacional de Ecología. Based on the best available information, the San Bernardino springsnail does not have special status in Mexico that would protect it from water depletion and diversion, controlled burning, or springhead inundation. Varela Romero and Myers (2010, p. 10) reported that these springsnails are not protected in Mexico, except that Mexican Federal permits are required to intentionally collect specimens for scientific study.

In summary, the primary factors likely to affect the San Bernardino springsnail's continued existence include the fire retardant chemicals, springhead inundation, and water depletion and diversion. Based on our analysis of the best available information, current regulatory mechanisms are inadequate to protect the San Bernardino springsnail's habitat from these threats in the United States and Mexico.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Invasive Competitors

The potential threat to springsnails from New Zealand mudsnails is described under Factor E for the Three Forks springsnail. Although invasion by New Zealand mudsnails is not considered an immediate threat, they are spreading into Arizona from Utah. If New Zealand mudsnails were to be spread into the spring systems harboring the San Bernardino springsnail, the effect could be devastating. Additionally, control would be difficult because mudsnails are small and cryptic, and chemical treatment to eradicate them would also eradicate springsnails. Because the New Zealand mudsnail can outcompete and replace native springsnails, we consider this nonnative competitor to be a potential threat to the San Bernardino springsnail's continued existence in the foreseeable future.

Climate Change and Drought

The same potential effects of climate change described under Factor E for the Three Forks springsnail apply to the San Bernardino springsnail. Loss of water flow has already manifested itself within the range of the San Bernardino springsnail, coinciding with extreme drought in the case of Snail Spring. Continued drying related to drought will likely exacerbate potential drying of springs and may lead to population declines and localized extirpations. In addition to loss of water flow, continued drying trends could exacerbate the terrestrial spread of buffelgrass, making San Bernardino springsnail habitats vulnerable to wildfires in the future. As such, we find that climate change and drought could threaten the San Bernardino springsnail in the future throughout its entire range.

Endemism

The increased vulnerability posed by endemism as described under Factor E for the Three Forks springsnail applies to the San Bernardino springsnail. Basically, the San Bernardino springsnail has suffered reductions in overall distribution and abundance, as evidenced at Snail Spring and Los Ojitos. We consider the San Bernardino springsnail to be an endemic species, because it only occurs at two sites in the United States and five sites in Mexico. Also, their populations are very restricted in distribution, have limited mobility, and are strictly aquatic specialists of spring ecosystems. Endemism is not a threat to the species in and of itself, but the San Bernardino springsnail's endemic nature may make them more vulnerable to extinction from other potential threats in the future.

Listing Determination for the San Bernardino Springsnail

Section 3 of the Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species that ''is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' We find that the San Bernardino springsnail is not presently in danger of extinction throughout its entire range, based on the immediacy, severity, and extent of the threats described above. However, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the species, and have determined that the San Bernardino springsnail meets the definition of

threatened under the Act, rather than endangered, because significant threats are not operative now, but are likely to cause the species to become in danger of extinction in the foreseeable future. Thus the San Bernardino springsnail meets the definition of a threatened species, because it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Based on the best scientific and commercial information available regarding the threats to the species, we have found that threats do not rise to the level such that the San Bernardino springsnail is in danger of extinction now. However, significant threats may rise to a level in the foreseeable future that the species is likely to become an endangered species throughout all or a significant portion of its range. The species' habitat is likely to be threatened in the foreseeable future with destruction, modification, and curtailment in part of its range due to the potential use of fire retardant chemicals in the United States, and throughout its entire range in both the United States and Mexico due to potential springhead inundation, and water depletion and diversion. Also, we found that the San Bernardino springsnail is likely to become in danger of extinction in the foreseeable future throughout its entire range due to the potential invasion and predation by nonnative crayfish, invasion and competition with New Zealand springsnails, and climate change and drought drying its springhead habitat. Due to the species' endemic nature, the San Bernardino springsnail may be more vulnerable to extinction in the foreseeable future from these potential threats throughout its entire range.

Unlike the Three Forks springsnail, there are more currently occupied sites with San Bernardino springsnail populations, and the current severe threats of fire and crayfish predation identified for the Three Forks springsnail are not currently operative on the San Bernardino springsnail. The site locations in the United States for the two species are separated by over 125 mi (200 km); the environmental conditions are different for the two species (i.e. landscape setting), and the threat type, magnitude, and immediacy are different for the two. Therefore, while the Three Forks springsnail meets the definition of an endangered species under the Act, we have determined that the San Bernardino springsnail meets the definition of threatened under the Act, rather than endangered, because significant threats are not immediately affecting the species and are not at a high enough magnitude that they are causing the species to be presently in danger of extinction throughout all or a significant portion of its range.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The San Bernardino springsnail is an endemic species occurring at two sites in the United States and five sites in Mexico. We find that all threats to the San Bernardino springsnail could potentially occur throughout its entire range in the foreseeable future. Accordingly, our assessment and determination applies to the species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available from our Web site (*http://www.fws.gov/endangered*), or from our Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private and State lands.

Funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for nonfederal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Arizona would be eligible for Federal funds to implement management actions that promote the protection and recovery of the Three Forks springsnail. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the Three Forks springsnail and the San Bernardino springsnail. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its

critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) requires Federal agencies, in consultation with the Service, to carry out programs for the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

For the Three Forks springsnail and San Bernardino springsnail, Federal agency actions that may require consultation as described in the preceding paragraph include activities approved under a forest management plan, a refuge comprehensive management plan, and activities that require a permit from the Army Corps of Engineers pursuant to section 404 of the Clean Water Act.

The USFS has established a closure around Three Forks Springs to prevent unauthorized access. The AGFD has implemented a crayfish trapping program and a Three Forks springsnail monitoring program. A captive refugium for Three Forks springsnail has been established at the Phoenix Zoo, in coordination with USFS and AGFD. We intend to continue working with the USFS, AGFD, the Phoenix Zoo, and a private landowner who owns property near Boneyard Bog Springs to develop conservation actions for the Three Forks springsnail.

Efforts to rehabilitate habitat on the San Bernardino NWR at Tule Spring were initiated (Service 2003, p. 2), with the intention of potentially introducing San Bernardino springsnails. However, the inconsistency of water flow complicated the habitat reestablishment effort. There was not enough free-flowing water to support San Bernardino springsnail reintroduction at Tule Spring. The San Bernardino NWR is currently looking for opportunities to augment the water supply to complete the habitat restoration efforts at Tule Spring and reintroduce springsnails. Also, the Service is seeking to acquire, through donation, the John Slaughter Ranch Museum for incorporation into the San Bernardino NWR. This would provide tremendous opportunities to protect, manage, and enhance springs on the property. However, it is uncertain if this transaction will occur. The Service is continuing to work with AGFD and the John Slaughter Ranch Museum to develop conservation actions for the San Bernardino springsnail, including the development of a domestic water well to augment surface water flow.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened or endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the Three Forks springsnail and San Bernardino springsnail, such as the introduction of competing, nonnative species to the State of Arizona;

(3) Unauthorized release of biological control agents that attack any life stage of this species;

(4) Unauthorized modification of the springs or water flow of any stream or removal or destruction of emergent aquatic vegetation in any body of water in which the Three Forks springsnail or San Bernardino springsnail are known to occur; and

(5) Unauthorized discharge of chemicals or fill material into any waters in which the Three Forks springsnail or San Bernardino springsnail are known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements, such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the specific elements of physical or biological features that, together, provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species, but that was not occupied at the time of listing, may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species at its time of listing only when a designation limited to its then current range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to:
(1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical or biological features (PBFs) that are essential to the conservation of the species, and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific PBFs from studies of the species' habitats, ecology, and life history as described below. We have determined that the Three Forks springsnail and San Bernardino springsnail require the following physical or biological features:

Space for Individual and Population Growth and Normal Behavior

The Three Forks and San Bernardino springsnails occur where water emerges from the ground as free-flowing springs and spring runs. Within spring ecosystems, proximity to springheads is important due to their need for

appropriate water chemistry, substrate, and flow characteristics of springheads. The Three Forks springsnail inhabits free-flowing springs, concrete boxed springheads, spring runs, spring seeps, and shallow pond water. In the United States, the San Bernardino springsnail inhabits free-flowing springs, a concrete boxed springhead, and spring runs. Therefore, based on the information above, we identify free-flowing springs, spring runs, spring seeps, and shallow pond water to be physical or biological features for both species.

Food, Water, Air, Light, or Other Nutritional or Physiological Requirements

Martinez and Myers (2008, pp. 189–194) found the presence of Three Forks springsnail was associated with gravel and pebble substrates, shallow water up to 6 cm (2.35 in) deep, high conductivity, alkaline waters of pH 8, and the presence of pond snail, *Physa gyrina.* Three Forks springsnail density is significantly greater on gravel and cobble substrates (Martinez and Rogowski 2011, p. 220; Martinez and Myers 2002, p. 1), though the species has been reported as ''abundant'' in the fine-grained mud of a 0.01 ha (0.02 ac) pond at Three Forks Springs (Taylor 1987, p. 32). Flowing water is essential to provide for the species' life-history processes.

The density of San Bernardino springsnails is positively associated with cobble substrates, higher vegetation density, faster water velocity, higher dissolved oxygen, water temperature of 57 to 72 °F (14 to 22 °C), and pH values between 7.6 and 8.0 (Malcom *et al.* 2005, pp. 71, 75–76). San Bernardino springsnail densities are higher in sand and cobble substrates, higher vegetation density, and higher water velocity, but lower in silt and organic substrates, and deeper water (Malcom *et al.* 2005, pp. 75–76). Flowing water is essential to provide for the species' life-history processes.

Three Forks and San Bernardino springsnails consume periphyton on submerged surfaces. Periphyton is a complex mixture of algae, detritus, bacteria, and other microbes that grow attached to submerged surfaces such as cobble or larger plants, such as watercress. Periphyton are primary producers of energy (organisms at the beginning of a food chain that produce biomass from inorganic compounds) and can be sensitive indicators of environmental change in flowing waters. Production of periphyton is essential to provide forage to support physiological health. Therefore, based on the information above, we identify substrates with periphyton to be a physical or biological feature for both species.

Cover and Shelter

Three Forks springsnail and San Bernardino springsnail utilize cobble, gravel, sand, woody debris, aquatic vegetation, and leaf matter for cover and shelter. These features are necessary to provide some protection from predators and competitors. Therefore, we identify cobble, gravel, sand, woody debris, aquatic vegetation, and leaf matter for cover and shelter to be a physical or biological feature for both species.

Sites for Breeding, Reproduction, and Rearing and Development of Offspring

Substrate characteristics can influence the productivity of Three Forks and San Bernardino springsnails. Suitable substrates are typically firm, characterized by cobble, gravel, sand, woody debris, and aquatic vegetation such as watercress, though this is influenced by water flow and depth. Suitable substrates increase productivity by providing suitable egg laying sites, protection of young from predators, and provision of food resources. Therefore, based on the information above, we identify substrates with cobble, gravel, pebble, sand, silt, and aquatic vegetation, for egg laying, maturing, feeding, and escape from predators to be physical or biological features for both species.

Habitats That Are Protected From Disturbance or Are Representative of the Historical, Geographical, and Ecological Distribution of the Species

The Three Forks springsnail and the San Bernardino springsnail have restricted geographic distributions. Endemic species whose populations exhibit a high degree of isolation are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Therefore, it is essential to maintain the spring systems upon which the species' depend. Adequate spring sites, free of disturbance, must exist to promote population expansion and viability. This means reasonable protection from disturbance caused by soil erosion following wildfires, exposure to fire retardant, water depletion and diversion, springhead inundation, and nonnative species. Therefore, based on the information above, we identify spring sites free of disturbance to be a physical or biological feature for both species.

Primary Constituent Elements for the Three Forks and San Bernardino Springsnails

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Three Forks springsnail and San Bernardino springsnail in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the specific elements of physical or biological features that, together, provide for a species' life-history processes and are essential to the conservation of the species.

Based on the above needs and our current knowledge of the life history, biology, and ecology of these species and the habitat requirements for sustaining the essential life-history functions of these species, we have determined that the PCEs specific to the Three Forks springsnail and San Bernardino springsnail are:

(1) Adequately clean spring water (free from contamination) emerging from the ground and flowing on the surface;

(2) Periphyton (attached algae), bacteria, and decaying organic material for food;

(3) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for egg laying, maturing, feeding, and escape from predators; and

(4) Either an absence of nonnative predators (crayfish) and competitors (snails) or their presence at low population levels.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protections. The features essential to the conservation of the Three Forks springsnail and San Bernardino springsnail may require special management considerations or protections to reduce the following threats: Soil erosion following high-intensity wildfires, exposure to fire retardant, springhead inundation, water depletion and diversion, and the introduction of nonnative predators and competitors.

For these springsnails, special management considerations or protection are needed both within and outside of critical habitat areas to

address threats. Management activities that could ameliorate threats include (but are not limited to) protecting against: (1) Wildfire and fire retardant used to fight wildfires, (2) predation by nonnative crayfish, (3) water depletion and diversion, (4) potential competition from nonnative New Zealand mudsnails or predation by nonnative crayfish, and (5) harm from livestock and other ungulates through fencing to protect spring habitats from damage. Special management is also needed for the purposes of adaptive management, and includes continuing to conduct research on the springsnails, and on critical aspects of their biology (for example, reproduction, sources of mortality, sensitivity to contaminants, dispersal behavior, anti-predator behavior, etc.).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of the Three Forks springsnail and San Bernardino springsnail. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are designating critical habitat in areas within the geographical area occupied by the species at the time of this final listing rule. We also are designating specific areas outside the geographical area occupied by the species at the time of this final listing rule that were historically occupied, but are presently unoccupied, because we have determined that such areas are essential for the conservation of the species. We are designating all habitat in the United States containing PCEs that we consider to be currently occupied, and unoccupied springs that are essential for the conservation of the species. We are not designating critical habitat in Sonora, Mexico, because we do not designate critical habitat outside the United States.

We assessed the critical life-history components of these springsnail species, as they relate to habitat, and used this information to identify which areas to designate as critical habitat. Three Forks and San Bernardino springsnails require unpolluted spring water in springheads and spring runs; periphyton, bacteria, and decaying organic material for food; rock-derived substrates for egg-laying, maturing, feeding, and escape from predators; and absence or tolerable levels of nonnative predators and competitors. The areas designated as critical habitat for the Three Forks springsnail and the San Bernardino springsnail contain these PCEs that are essential to these life-history processes of the species.

Units were designated based on sufficient elements of physical or biological features being present to support the Three Forks springsnail's and San Bernardino springsnail's life-history processes. Some units contain all of the identified elements of physical or biological features and supported multiple life processes. Some units contain only some elements of the physical or biological features necessary to support the Three Forks springsnail's and San Bernardino springsnail's particular use of that habitat. Each specific area will be described below, including a discussion of why that area meets the definition of critical habitat.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the Three Forks springsnail and San Bernardino springsnail. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger a section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

Final Critical Habitat Designation

For the Three Forks springsnail, we are designating critical habitat in two areas currently occupied, and one area currently unoccupied by the species, but considered to have been historically occupied. We have determined that the unoccupied unit, Three Forks Springs, is essential for the conservation of the species, because the geographic area occupied at the time of this final listing rule is not sufficient for recovery. The currently occupied areas represent a portion of the former range and are vulnerable to a single catastrophic event. When developing conservation strategies for species whose life histories are characterized by short generation time, small body size, high rates of population increase, and high habitat specificity, greater emphasis should be placed on the maintenance of multiple populations as opposed to protecting a single population (Murphy *et al.* 1990, pp. 41–51).

For the San Bernardino springsnail, we are designating critical habitat in two springs currently occupied and two springs not currently occupied by the species. The unoccupied springs are essential to the conservation of the species, because the geographic area that is currently occupied is not sufficient for recovery. Even though five additional sites have been recently discovered in Sonora, Mexico, there are currently only two occupied units in the United States and all seven sites where the species occurs are close enough in they are vulnerable to a single catastrophic event. So, we are designating the unoccupied units of Snail and Tule Springs to increase species' redundancy, resiliency, and representation. (Resiliency of a species allows the species to recover from periodic disturbance. Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. Adequate representation ensures that the species' adaptive capabilities are conserved and genetic diversity is maintained.)

The critical habitat units we describe below constitute our current and best assessment of the areas that meet the definition of critical habitat for the Three Forks springsnail and the San Bernardino springsnail. Table 3 summarizes the threats and current occupancy of the designated critical habitat units. Table 4 provides approximate areas (ac/ha) and land ownership of the units.

TABLE 3—THREATS AND OCCUPANCY IN AREAS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF THE THREE FORKS AND SAN BERNARDINO SPRINGSNAILS

Critical habitat unit	Threats requiring special management or protections	Currently occupied
Three Forks springsnail		
Three Forks Springs Unit	Soil erosion following wildfires, fire retardant use, nonnative predators, drought, and potential introduction of nonnative snails.	No.
Boneyard Bog Springs Unit	Soil erosion following wildfires, fire retardant use, nonnative predators, drought, and potential introduction of nonnative snails.	Yes.
Boneyard Creek Springs Unit	Soil erosion following wildfires, fire retardant use, nonnative predators, drought, and potential introduction of nonnative snails.	Yes.
San Bernardino springsnail		
Snail Spring Unit	Water depletion, drought, potential introduction of nonnative snails, and potential exposure to fire retardant chemicals through wind drift.	No.
Goat Tank Spring Unit	Water depletion, drought, potential introduction of nonnative snails, and potential exposure to fire retardant chemicals through wind drift.	Yes.
Horse Spring Unit	Water depletion, drought, potential introduction of nonnative snails, and potential exposure to fire retardant chemicals through wind drift.	Yes.
Tule Spring Unit	Fire retardant use, water depletion, drought, and potential introduction of nonnative snails	No.

TABLE 4—OWNERSHIP AND APPROXIMATE AREA OF CRITICAL HABITAT UNITS FOR THE THREE FORKS AND SAN BERDARDINO SPRINGSNAILS

Critical habitat unit	Ownership	Total area in acres (hectares)
Three Forks springsnail		
Three Forks Springs Unit	Federal	6.1 ac (2.5 ha)
Boneyard Bog Springs Unit	Federal	5.3 ac (2.1 ha)
Boneyard Creek Springs Unit	Federal	5.8 ac (2.3 ha)
Total		17.2 ac (6.9 ha)
San Bernardino springsnail		
Snail Spring Unit	State	1.129 ac (0.457 ha)
Goat Tank Spring Unit	State	0.005 ac (0.002 ha)
Horse Spring Unit	State	0.078 ac (0.032 ha)
Tule Spring Unit	Federal	0.801 ac (0.324 ha)
Total		2.013 ac (0.815 ha)

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Three Forks springsnail and San Bernardino springsnail, below. Unit descriptions are presented separately for each species.

Three Forks Springsnail

Three Forks Springs Unit

The Three Forks Springs Unit is a complex of springs, spring runs, spring seeps, a segment of an unnamed stream connecting them, and a small amount of upland area encircling them to make a single, contiguous unit of approximately 6.1 ac (2.5 ha) in the vicinity of UTM Zone 12 coordinate 655710, 3747260 in Apache County, Arizona. The entire unit is in Federal ownership and managed by the Apache-Sitgreaves National Forests. The unit encompasses eight major springheads and spring runs, each flowing a short distance of several meters to an unnamed tributary of the Black River. Two of the spring runs flow into a shallow pond and has an outflow run to the unnamed tributary. The springs complex contains spring seeps along the spring runs and the tributary. The tributary itself provides habitat connectivity. The area within the designated unit contains a small amount of upland area adjacent to the springheads, spring runs, spring seeps, and the tributary segment. The moist soils and vegetation in the adjacent uplands (approximately 3.3 ft (1.0 m) from surface water) produce periphyton (food for snails) and protect the substrate.

Currently, the Three Forks Springs Unit is not occupied. However, the Three Forks Springs' first documented occupancy was in 1973 (Landye 1973, p. 49), and the species was abundant here until 2004 (AGFD 2008, entire), at which time the waters are suspected to have been contaminated by wildfire retardant drift. The last documented occurrence of the Three Forks springsnail at Three Forks Springs was in 2003 (AGFD 2008, entire). Fire retardant becomes nontoxic within a few days of contact with water, so currently, the Three Forks Springs Unit contains all of the PCEs. The unit is essential for the conservation of the species, because: (1) It has the ability to support all of the Three Forks springsnail life processes, (2) the geographic area occupied at the time of this final listing rule is not sufficient for recovery, and (3) it increases the species' population redundancy. There are only two currently occupied areas representing a portion of the species' former range, and these two small areas

cause the species to be vulnerable to extinction from a single, catastrophic event.

Threats to the Three Forks springsnail in this unit include the soil erosion following wildfires, fire retardant chemicals, drought, nonnative crayfish, and potential introduction of nonnative New Zealand mudsnails.

Boneyard Bog Springs Unit

The Boneyard Bog Springs Unit is a complex of springs, spring runs, spring seeps, and the segment of Boneyard Creek connecting them, and a small amount of upland area encircling them to make them a single unit of approximately 5.3 ac (2.1 ha), in the vicinity of UTM Zone 12 coordinate 659970, 3750730, in Apache County, Arizona. The entire unit is in Federal ownership and managed by the Apache-Sitgreaves National Forests. The unit encompasses eight major springheads and spring runs, each of which flows several yards (meters) to Boneyard Creek, a tributary of the Black River. The spring complex contains spring seeps along the spring runs and the tributary. We are designating a contiguous critical habitat unit that includes the springheads, spring runs, seeps, and that portion of Boneyard Creek that connects the spring runs. Boneyard Creek is occupied where spring seeps are present along it, and the unit will provide for springsnail movement downstream, and is essential for habitat connectivity. This unit contains approximately 3.3 ft (1.0 m) in width of upland area on each side of the springheads, spring runs, spring seeps, and tributary segment, because the moist soils and vegetation in the adjacent uplands provide food for the snails.

This unit is currently occupied and contains all the PBFs essential for the conservation of the species. Also, the PBFs that may require special management are adequately flowing springs, runs, and seeps that are free of contaminants and disturbance from nonnative species. Special management is needed to protect against the threats of wildfire, fire retardant used to fight wildfires, elk wallowing, predation by nonnative crayfish, drought, and potential competition from nonnative New Zealand mudsnails.

Boneyard Creek Springs Unit

The Boneyard Creek Springs Unit is a complex of springs, spring runs, spring seeps, and the segment of Boneyard Creek connecting them, and a small amount of upland area encompassing them, in a single, contiguous unit of approximately 5.8 ac (2.3 ha), in the vicinity of UTM Zone 12 coordinate 658300, 3749790, in Apache County, Arizona. The entire unit is in Federal ownership and managed by the Apache-Sitgreaves National Forests. The unit encompasses at least 11 major springheads and spring runs, which each flow a distance of several meters (yards) to Boneyard Creek, a tributary of the Black River. The spring complex contains spring seeps along the spring runs and the tributary. We are designating as critical habitat a contiguous unit that includes the springheads, spring runs, seeps, and that portion of Boneyard Creek that connects the spring runs. Boneyard Creek is occupied where there are spring seeps along it, and it should provide for springsnail movement downstream and is essential for habitat connectivity. The area within the unit contains approximately 3.3 ft (1.0 m) in width of upland area on each side of the springheads, spring runs, spring seeps, and tributary segment. The moist soils and vegetation in the adjacent uplands produce food for the snails and protect the substrate they use.

The Boneyard Creek Springs Unit is currently occupied and contains all the PBFs essential for the conservation of the species. The PBFs that may require special management are adequately flowing springs, runs, and seeps that are free of contaminants and disturbance from nonnative species. Threats to the Three Forks springsnail in this unit that may require special management include wildfire, fire retardant used to fight wildfires, predation by nonnative crayfish, drought, and potential competition from nonnative New Zealand mudsnails.

San Bernardino Springsnail

Snail Spring Unit

The Snail Spring Unit encompasses 1.129 ac (0.457 ha) in Cochise County, Arizona. The entire unit is owned by the State of Arizona and managed by the John Slaughter Ranch Museum. The spring is approximately 16 ft (5 m) in diameter, and has a spring run that goes south from the spring approximately 77 ft (23 m) to a manmade ditch, which runs 34 ft (10 m) to a dirt road. It passes under the road in a 12-ft (4-m) culvert, then flows approximately 56 ft (17 m) below the road. We are not designating the road as critical habitat, but we are designating the culvert beneath the road, because it contains flowing water that provides PCE 1. The spring and spring run down to the ditch are dry and unoccupied, though they contain PCE 3, substrate. The ditch is unoccupied, though all the PCEs are present. We are including as part of this critical habitat designation a 3.3-ft (1-m) upland area on each side of the spring, spring run and ditch, because moist soils and upland vegetation are necessary to produce food for the snails and protect the substrate they use. Because of the small size of the spring, spring run, and ditch, we are precluded from mapping them precisely due to inaccuracies inherent in the use of satellites for locating and mapping. Therefore, for mapping purposes we created a circle that encompasses them. The critical habitat is the spring, spring run, ditch and buffer within the 249-ft (76-m) diameter circle centered on UTM coordinate 663858, 3468182 in Zone 12.

The Snail Spring Unit is currently unoccupied by the San Bernardino springsnail, but it was historically occupied. This Snail Spring Unit is essential for the conservation of the species, because it will provide population redundancy following future reintroduction of the species.

Goat Tank Spring Unit

This unit encompasses 0.005 ac (0.002 ha) in Cochise County, Arizona. The entire unit is in State ownership and managed by the John Slaughter Ranch Museum. The spring is contained within a square concrete box approximately 2 ft by 3 ft (0.6 m by 0.9 m). There is also some spring seepage emanating from the base of a cottonwood tree about 6.6 ft (2 m) from the spring-box. We are designating as critical habitat a 3.3-ft (1-m) upland area on each side of the springbox and spring seepage, because it has moist soils and vegetation that produces food for the snails and protects the substrate the snails use. Because of the small size of the spring-box and spring seepage, we are precluded from mapping them precisely due to inaccuracies inherent in the use of satellites for locating and mapping. Therefore, for mapping purposes we created a circle that encompasses them. The critical habitat designation is the spring-box, spring seepage, and buffer within the 16-ft (5-m) diameter circle centered on UTM coordinate 663725, 3468162 in Zone 12.

This unit is occupied at the time of this final listing rule, and contains all the PBFs essential for the conservation of the species. The PBFs which may require special management are free-flowing springs and habitat free of disturbance from nonnative competitors. Threats to the San Bernardino springsnail in this unit that may require special management include water depletion and drought. Water depletion has affected the species with a loss of flowing water at nearby

Snail Spring in the recent past (Cox *et al.* 2007, p. 2; Smith *et al.* 2003, p. 1; Malcom *et al.* 2003, p. 18). Also, potential threats may be posed by nonnative snails, should they be introduced, and by fire retardant chemicals, should they be applied in other portions of the San Bernardino Valley and carried into this unit by wind drift.

Horse Spring Unit

This unit encompasses 0.078 ac (0.032 ha) in Cochise County, Arizona. The entire unit is State-owned and managed by the John Slaughter Ranch Museum. The spring emerges from a PVC pipe, which is enclosed in a spring-box, and water flows out in a spring-run that is approximately 1.6 ft (0.5 m) wide and 51 ft (16 m) in length. We are designating as critical habitat a 3.3-ft (1-m) buffer of upland area on each side of the springhead and spring-run, because it has moist soils and vegetation that produce food for the snails and protect the substrate they use. Because of the small size of the springhead and spring-run, we are precluded from mapping them precisely due to inaccuracies inherent in the use of satellites for locating and mapping. Therefore, for mapping purposes we created a circle that encompasses them. The designated critical habitat is the spring-box, spring seepage, and buffer within the 66 ft (20 m) diameter circle centered on UTM coordinate 663772, 3468091 in Zone 12.

The Horse Spring Unit is occupied at the time of this listing, and contains all the PBFs essential for the conservation of the species. The PBFs which may require special management are free-flowing springs and habitat free of disturbance from nonnative competitors. Threats to the San Bernardino springsnail in this unit that may require special management include groundwater depletion and drought. Groundwater depletion has affected the species with a loss of flowing water at nearby Snail Spring in the recent past (Cox *et al.* 2007, p. 2; Smith *et al.* 2003; p. 1, Malcom *et al.* 2003, p. 18), and may threaten this site in the future. Also, potential threats may be posed by nonnative snails, should they be introduced, and by fire retardant chemicals, should they be applied in other portions of the San Bernardino Valley and carried into this unit by wind drift.

Tule Spring Unit

This unit encompasses 0.801 ac (0.324 ha) in Cochise County, Arizona. The entire unit is in Federal ownership and managed by the San Bernardino NWR. The spring forms a pond approximately 75 ft (23 m) north-south and 43 ft (13 m) east-west, and it has a spring-run that is approximately 71 ft (22 m) in length. The spring run emerges from the southeastern side of the spring pond, runs northeast for approximately 41 ft (13 m) to a manmade ditch, which runs southeast 30 ft (9 m). We are designating as critical habitat a 3.3-ft (1-m) buffer of upland area on each side of the spring, spring-run, and ditch, because it has moist soils and vegetation that produce food for the snails and protect the substrate they use. Although there is a pond at this location, the seeps where the water emerges are not located within the pond. The pond is included in the designation, because, along with the spring, seeps, spring run, ditch, and upland buffer, it comprises an inter-related, functioning aquatic system important for the springsnails and the fish. The water from the pond will maintain a springbrook, and the springbrook will drain into other ponds.

Because of the small size of the spring, spring-run, and ditch, we are precluded from mapping them precisely due to inaccuracies inherent in the use of satellites for locating and mapping. Therefore, for mapping purposes we created a circle that encompasses them. The critical habitat is the spring, spring-run, ditch and buffer within the 210-ft (64-m) diameter circle centered on UTM coordinate 664259, 3468499 in Zone 12.

The Tule Spring Unit is currently unoccupied by the San Bernardino springsnail at the time of this listing, but is considered to have been historically occupied (Malcom *et al.* 2003, p. 19), and shares a common aquifer and similarities in water chemistry, temperature, and hydrology with Snail Spring. We consider the Tule Spring Unit to be essential to the conservation of the species, because it contains all the PCEs necessary for the life-history processes, and it provides population redundancy following future reintroduction of the species.

Threats to the San Bernardino springsnail in this unit include the potential use of fire retardant chemicals, water depletion, drought, and the potential introduction of nonnative snails.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat. Decisions by the courts of appeals for the Fifth and Ninth Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Circuit 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Circuit 2001), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PCEs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.2 as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or

destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive project redesign or relocation of the project. Costs associated with implementing reasonable and prudent alternatives are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may have been affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal actions that may affect the Three Forks springsnail or the San Bernardino springsnail or their designated critical habitat require section 7(a)(2) consultation under the Act. On private lands in the United States, examples of Federal actions include, but are not limited to, Environmental Protection Agency authorization of discharges under the National Pollutant Discharge Elimination System and registration of pesticides; Federal Highway Administration approval of funding of road or highway infrastructure and maintenance; Corps authorization of discharges of dredged and fill material into waters of the United States under section 404 of the CWA; U.S. Department of Agriculture (USDA) Natural Resources Conservation Service technical assistance and other programs; USDA—Rural Utilities Service infrastructure or development; U.S. Department of Homeland Security activities in regard to immigration enforcement and regulation; the Department of Housing and Urban Development Small Cities Community Development Block Grant and home loan programs; or a permit from us under section 10(a)(1)(B) of the Act. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations. In addition to several of the specific examples above, other Federal actions that may require consultation on Federal lands include land-management actions implemented by the applicable Federal land management agency.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain those PCEs that relate to the ability of the area to periodically support the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the Three Forks springsnail or the San Bernardino springsnail. As discussed above, the role of critical habitat is to support the life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving Federal actions that may adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for the Three Forks springsnail and the San Bernardino springsnail include, but are not limited to:

(1) Actions that would reduce the quantity of water flow within the spring systems designated as critical habitat.

(2) Actions that would result in the inundation of springheads within the spring systems designated as critical habitat.

(3) Actions that would degrade water quality within the spring systems designated as critical habitat.

(4) Actions that would reduce the availability of course, firm aquatic substrates within the spring systems that are designated as critical habitat.

(5) Actions that would reduce the occurrence of native aquatic macrophytes, algae, and/or periphyton within the spring systems designated as critical habitat.

(6) Actions that would cause, promote, or maintain the presence of nonnative predators and competitors at unacceptable levels within the spring systems designated as critical habitat.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD), or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no DOD lands with a completed INRMP within the critical habitat designation. Therefore, we are not exempting lands from this final designation of critical habitat for the San Bernardino or Three Forks springsnails pursuant to section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any

particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. The statute on its face, as well as the legislative history, is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor in making that determination.

Under section 4(b)(2) of the Act, the Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis of the proposed critical habitat designation and related factors (Industrial Economics 2011). The draft economic analysis, dated October 24, 2011, was made available for public review on November 17, 2011 (76 FR 71300). We accepted comments on the draft analysis until December 19, 2011. Following the close of the comment periods, a final analysis of the potential economic effects of the designation was completed on January 11, 2012, taking into consideration the public comments and any new information (Industrial Economics 2012).

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for Three Forks springsnail and San Bernardino springsnail; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA considers economic impacts to activities from 2012 (the year of this final critical habitat designation) through 2024 (the length of guidance and information for project and activity decisionmaking for the Apache-Sitgreaves National Forest's Land Management Plan). The FEA quantifies economic impacts of Three Forks springsnail and San Bernardino springsnail conservation efforts associated with the following categories of activity: pesticide use, wildfire suppression, and ungulate grazing (Industrial Economics 2012, p. ES–1).

Only minor administrative impacts are likely to result from the designation of critical habitat. This result is attributed to several factors, including: (1) Four of the seven proposed units already receive extensive protection from the Federal agencies managing the parcels; (2) three of the four federally-owned units are occupied, and thus, will require consultation regardless of the designation; (3) reintroduction of the San Bernardino springsnail to the unoccupied units is planned regardless of critical habitat designation; and (4) project modifications necessary to avoid adverse modification are indistinguishable from those necessary to avoid jeopardizing the species, because the species' existence heavily depends upon the spring systems in which they occur.

We anticipate seven potential section 7 consultations related to activities on federally managed lands. Both the Apache-Sitgreaves National Forests and San Bernardino NWR will need to address the springsnails in their management plans to prevent adverse modification of these units. Given the presence of springsnails in the Apache-Sitgreaves National Forests, the five consultations would occur without the designation. We anticipate the U.S. Forest Service will reinitiate two programmatic consultations, one for the Apache-Sitgreaves National Forests' Management Plan, and one for its nationwide plan on the use of fire retardants across national forests. Additionally, we anticipate up to three formal consultations, one for the response to the 2011 Wallow Fire, one for potential long-term burn area rehabilitation after the Wallow Fire, and one for salvaging trees within the fire perimeter. Incremental impacts are limited to the additional administrative costs (approximately $48,500) of considering the potential for the plans and projects to adversely modify critical habitat.

The San Bernardino NWR will likely reinitiate one programmatic consultation with the Service regarding its management plan, and participate in one formal consultation to reintroduce the springsnail to the Tule Spring Unit. Because the Service plans to reintroduce the springsnail at this site regardless of whether critical habitat is designated, incremental costs are limited to the administrative costs ($22,200) of considering adverse modification during the consultations.

Because we do not have information regarding the timing of likely consultations, we conservatively assume costs are incurred immediately following promulgation of this final rule. Total undiscounted costs are $70,700. In conformance with the Office of Management and Budget guidance, we also report present-value impacts and impacts on an annualized basis applying real discount rates of 3 and 7 percent. No small entities are anticipated to be affected by the designation. Also, we do not anticipate

impacts to the supply, distribution, or use of energy related to this critical habitat designation.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exerting his discretion to exclude any areas from this designation of critical habitat for the Three Forks and San Bernardino springsnails based on economic impacts. A copy of the final economic analysis with supporting documents may be obtained by contacting the Arizona Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the DOD where a national security impact might exist. In preparing this rule, we have determined that the lands within the designated critical habitat for the Three Forks and San Bernardino springsnails are not owned or managed by the DOD, and therefore, anticipate no impact to national security. There are no areas excluded based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

We have determined that the designation does not include any Tribal lands. We anticipate no impact to Tribal lands, partnerships, or HCPs from this critical habitat designation. Additionally, there are currently no conservation plans for the private lands containing springs occupied by the San Bernardino springsnail. Accordingly, the Secretary is not exercising his discretion to exclude any areas from this designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designations for Three Forks and San Bernardino springsnails will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small businesses affected within particular types of economic activities. In Appendix A of the FEA, the analysis did not anticipate impacts to small entities as a result of this designation. We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Three Forks springsnail. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see Application of the

''Adverse Modification'' Standard section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the species and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in the analysis and evaluates the potential for economic impacts. We did not anticipate any activities occurring within the next 13 years within or adjacent to the critical habitat we are designating that could potentially affect small businesses.

We determined from our analysis (Appendix A in FEA) that there will be no additional economic impacts to small entities resulting from the designation of critical habitat, because almost all of the potential costs of modification of activities and conservation identified in the economic analysis represent baseline costs that would be realized in the absence of critical habitat. The economic analysis estimates the overall annual incremental costs associated with the designation of critical habitat to be very modest, at approximately $70,700. All of these costs would derive from the added effort associated with considering adverse modification in the context of section 7 consultations.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on our analysis and currently available information, we concluded that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for Three Forks and San Bernardino springsnails will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget (OMB) has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. As none of the outcomes that may constitute ''a significant adverse effect'' are relevant to this analysis, energy-related impacts within the critical habitat designation are not anticipated. The economic analysis finds that extraction, energy production, and distribution are not expected to be affected (Industrial Economics 2012, p. A–8). Thus, based on information in the economic analysis, energy-related impacts associated with Three Forks and San Bernardino springsnail conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(1) This final rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or [T]ribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Three Forks springsnail and San Bernardino springsnail in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A

federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Arizona. We received comments from AGFD and have addressed them in the Summary of Comments and Recommendations section of this rule. The designation of critical habitat on Federal lands currently occupied by the Three Forks springsnail or San Bernardino springsnail imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where state and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical or biological features within the designated areas to assist the public in understanding the habitat needs of the Three Forks springsnail and San Bernardino springsnail.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as endangered or threatened under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of the Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no Tribal lands occupied at the time of listing with features essential for the conservation, and no Tribal lands that are essential for the conservation, of the Three Forks springsnail and San Bernardino springsnail. Therefore, we have not designated critical habitat on Tribal lands for the Three Forks springsnail and San Bernardino springsnail.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

■ 2. In § 17.11(h), add entries for ''Springsnail, San Bernardino'' and ''Springsnail, Three Forks'' to the List of Endangered and Threatened Wildlife in alphabetic order under SNAILS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
SNAILS							
*	*	*	*	*	*	*	
Springsnail, San Bernardino.	*Pyrgulopsis bernardina*.	U.S.A. (AZ) ..... Mexico (Sonora)	Entire	T	.....	17.95(f)	NA
*	*	*	*	*	*	*	
Springsnail, Three Forks.	*Pyrgulopsis trivialis*	U.S.A. (AZ)	Entire	E	.....	17.95(f)	NA
*	*	*	*	*	*	*	

■ 3. In § 17.95, amend paragraph (f) by adding entries for ''San Bernardino Springsnail (*Pyrgulopsis bernardina*)'' and ''Three Forks Springsnail (*Pyrgulopsis trivialis*)'' after the entry for ''Koster's Springsnail (*Juturnia Kosteri*) and Roswell's Springsnail (*Pyrgulopsis Roswellensis*),'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) Clams and Snails.

* * * * *

San Bernardino Springsnail (*Pyrgulopsis bernardina*)

(1) Critical habitat units are depicted for Cochise County, Arizona, on the map in paragraph (5) of this entry.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the San Bernardino springsnail consist of four components:

(i) Adequately clean spring water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Periphyton (attached algae), bacteria, and decaying organic material for food;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for egg laying, maturing, feeding, and escape from predators; and

(iv) Either an absence of nonnative predators (crayfish) and competitors (snails) or their presence at low population levels.

(3) Critical habitat does not include manmade structures other than the road culvert and concrete spring-boxes, which are included to protect the water flowing within them.

(4) *Critical habitat map units.* Data layers defining map units were plotted on 2007 USGS Digital Ortho Quarter Quad maps using Universal Transverse Mercator (UTM) coordinates in ArcMap. Because of the small size of the springs, spring runs and ditches, for mapping purposes we created a circle that encompasses them.

(5) *Note:* Index map of critical habitat for the San Bernardino springsnail follows:

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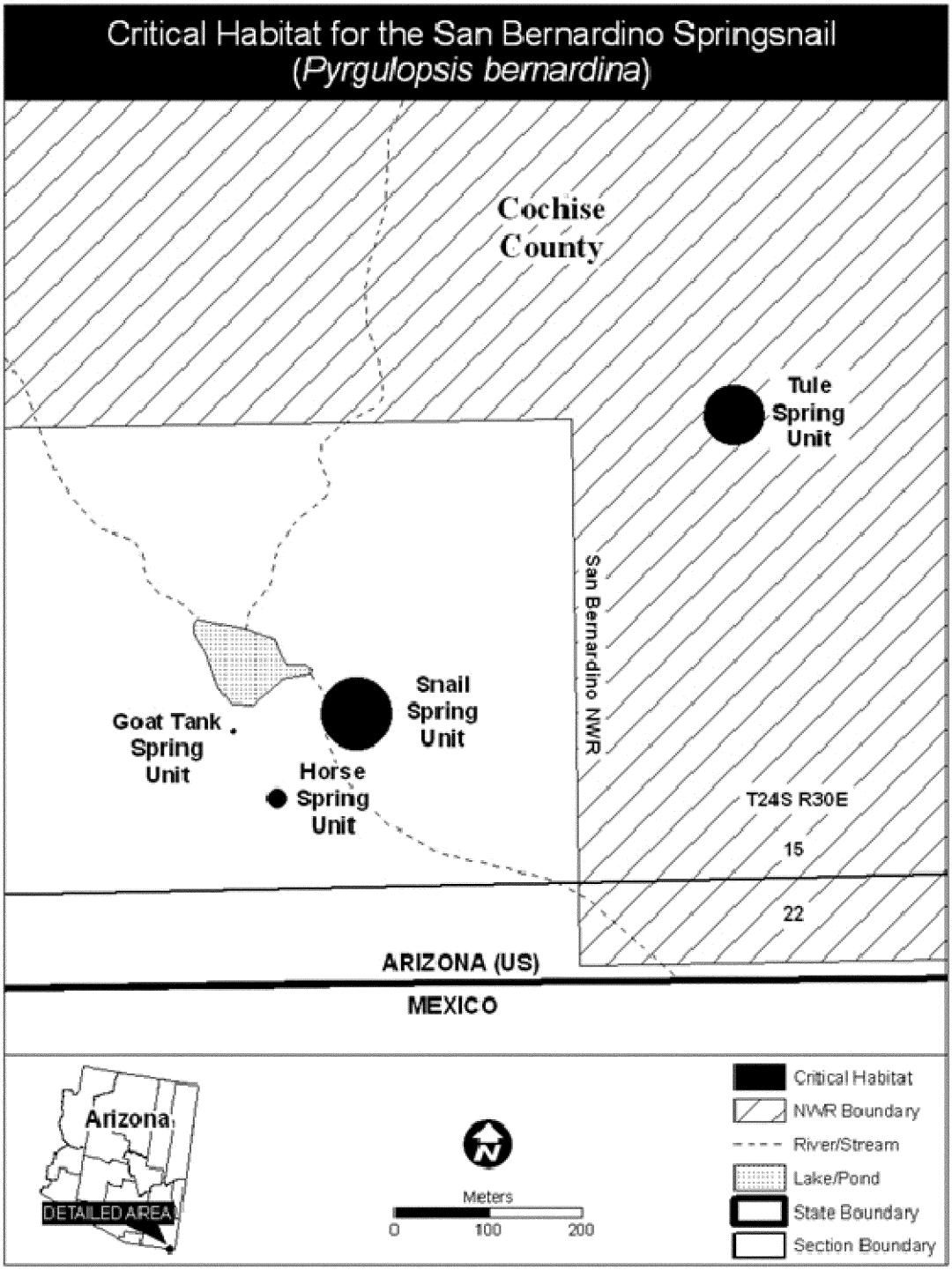

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(6) Snail Spring Unit contains approximately 0.457 ha (1.129 ac) in Cochise County, Arizona. This critical habitat unit is a spring approximately 5 m (16 ft) in diameter and has a spring run that goes south from the spring approximately 23.5 m (77 ft) to a manmade ditch, which runs 10.2 m (33.5 ft) to a dirt road. It passes under the road in a 3.5 m (11.5 ft) culvert, then flows approximately 17 m (56 ft) below the road. The culvert beneath the road is included in critical habitat, but not the road itself. We include a 1-m (3.3-ft) upland area on each side of the spring, spring run, and ditch. The critical habitat unit is the spring, spring run, ditch, and buffer within the 76-m (249-ft) diameter circle centered on UTM coordinate 663858, 3468182 in Zone 12 with the units in meters using North American Datum of 1983 (NAD 83).

(7) Goat Tank Spring Unit contains approximately 0.002 ha (0.005 ac) in Cochise County, Arizona. The unit is a spring contained entirely within a square concrete box approximately 0.61 by 0.91 m (2 by 3 ft) and spring seepage emanating from the base of a cottonwood tree about 2 m (7 ft) from the spring-box. This unit includes a 1-m (3.3-ft) upland area on each side of the spring box and spring. The critical habitat is the spring-box, spring seepage,

and buffer within the 5-m (16.4-ft) diameter circle centered on UTM coordinate 663725, 3468162 in Zone 12 with the units in meters using North American Datum of 1983 (NAD 83).

(8) Horse Spring Unit contains approximately 0.032 ha (0.078 ac) in Cochise County, Arizona. The unit is a spring and springrun approximately 0.5 m (1.6 ft) wide and 15.5 m (50.9 ft) in length. We include a 1-m (3.3-ft) upland area on each side of the springhead and spring-run. The designated critical habitat unit is the spring-box, spring seepage, and buffer within the 20-m (66-ft) diameter circle centered on UTM coordinate 663772, 3468091 in Zone 12 with the units in meters using North American Datum of 1983 (NAD 83).

(9) Tule Spring Unit contains approximately 0.324 ha (0.801 ac) in Cochise County, Arizona. The unit is a spring, which forms a pond approximately 23 m (75 ft) north-south and 13 m (43 ft) east-west, and it has a spring run that is approximately 22 m (71 ft) in length. The spring run emerges from the southeastern side of the spring pond, runs northeast for approximately 12.5 m (41 ft) to a manmade ditch, which runs southeast 9.2 m (30 ft). This unit includes a 1-m (3.3-ft) upland area on each side of the spring, spring run, and ditch. The designated critical habitat unit is the spring, spring-run, ditch, and buffer within the 64-m (210-ft) diameter circle centered on UTM coordinate 664259, 3468499 in Zone 12 with the units in meters using North American Datum of 1983 (NAD 83).

Three Forks Springsnail (*Pyrgulopsis trivialis*)

(1) Critical habitat units are depicted for Apache County, Arizona, on the map at paragraph (5) of this entry.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the San Bernardino springsnail consist of four components:

(i) Adequately clean spring water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Periphyton (attached algae), bacteria, and decaying organic material for food;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for egglaying, maturing, feeding, and escape from predators; and

(iv) Either an absence of nonnative predators (crayfish) and competitors (snails) or their presence at low population levels.

(3) Critical habitat does not include manmade structures other than concrete spring-boxes, which are included to protect the flowing water within them.

(4) Critical habitat map units were plotted on 2007 USGS Digital Ortho Quarter Quad maps using Universal Transverse Mercator (UTM) coordinates in ArcMap.

(5) *Note:* Index map of critical habitat for the Three Forks springsnail follows:

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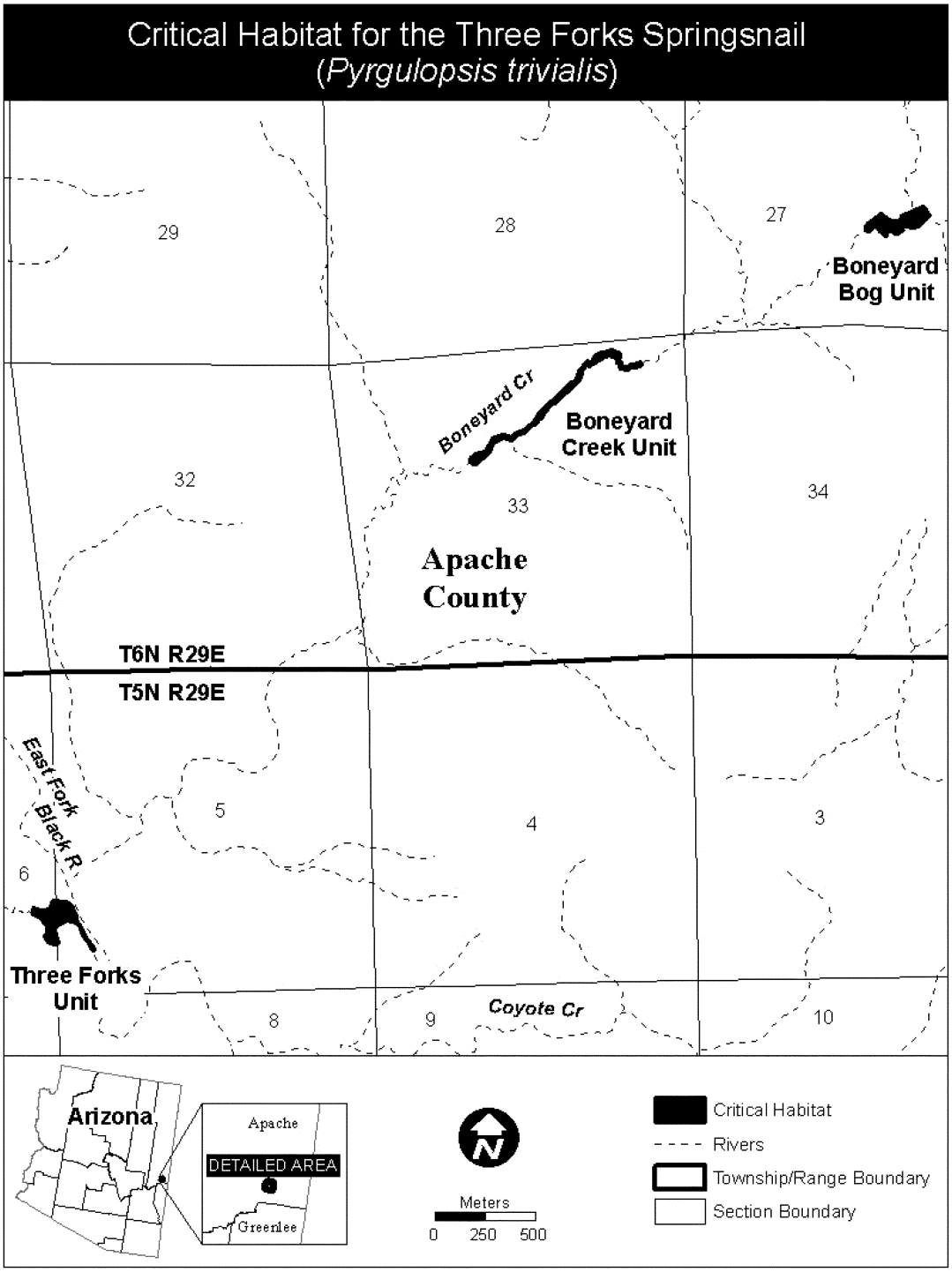

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(6) Three Forks Springs Unit (2.5 ha; 6.1 ac). The Three Forks Spring Unit consists of all areas within boundary points with the following coordinates in UTM Zone 12 with the units in meters using North American Datum of 1983 (NAD 83): 655708, 3747262; 655714, 3747269; 655746, 3747258; 655777, 3747256; 655802, 3747270; 655808, 3747288; 655815, 3747304; 655877, 3747299; 655898, 3747291; 655911, 3747271; 655922, 3747253; 655932, 3747227; 655932, 3747209; 655939, 3747196; 655948, 3747186; 655958, 3747165; 655969, 3747142; 655979, 3747116; 655998, 3747094; 656013, 3747078; 656022, 3747061; 656023, 3747050; 656013, 3747052; 656001, 3747065; 655991, 3747086; 655973, 3747112; 655963, 3747133; 655951, 3747166; 655931, 3747191; 655906, 3747198; 655886, 3747201; 655869, 3747198; 655836, 3747179; 655826, 3747158; 655830, 3747123; 655841, 3747098; 655838, 3747083; 655818, 3747085; 655785, 3747097; 655771, 3747122; 655782, 3747144; 655784, 3747170; 655752, 3747216; 655715, 3747232; 655707, 3747242; Thence returning to 655708, 3747262.

(7) Boneyard Bog Springs Unit (2.1 ha; 5.3 ac). The Boneyard Bog Springs Unit consists of all areas within boundary points with the following coordinates in UTM Zone 12 with the units in meters using North American Datum of 1983 (NAD 83): 659968, 3750753; 659990, 3750731; 660021, 3750713; 660060, 3750717; 660070, 3750742; 660176, 3750787; 660190, 3750781; 660199, 3750758; 660208, 3750744; 660159, 3750685; 660125, 3750680; 660088, 3750684; 660081, 3750690; 660072, 3750691; 660072, 3750676; 660076, 3750675; 660076, 3750664; 660069, 3750664; 660067, 3750663; 660060, 3750654; 660052, 3750648; 660034, 3750649; 660029, 3750654; 660027, 3750663; 660008, 3750659; 659997, 3750649; 659997, 3750639; 659988, 3750639; 659982, 3750641; 659958, 3750660; 659954, 3750671; 659945, 3750675; 659942, 3750688; 659933, 3750685; 659904, 3750662; 659889, 3750669; 659885, 3750687; 659902, 3750702; 659919, 3750712; Thence returning to 659968, 3750753.

(8) Boneyard Creek Springs Unit (2.3 ha; 5.8 ac). The Boneyard Creek Springs Unit consists of all areas within boundary points with the following coordinates in UTM Zone 12 with the units in meters using North American Datum of 1983 (NAD 83): 658758, 3750008; 658765, 3749996; 658763, 3749984; 658732, 3749975; 658714, 3749981; 658698, 3749968; 658661, 3749971; 658655, 3749981; 658655, 3749998; 658642, 3750000; 658638, 3750024; 658623, 3750034; 658606, 3750036; 658580, 3750029; 658568, 3750020; 658553, 3750013; 658537, 3750005; 658519, 3749993; 658507, 3749985; 658492, 3749992; 658479, 3749976; 658469, 3749960; 658467, 3749945; 658460, 3749935; 658452, 3749913; 658405, 3749863; 658371, 3749841; 658343, 3749805; 658312, 3749789; 658273, 3749741; 658272, 3749733; 658268, 3749725; 658261, 3749722; 658254, 3749720; 658242, 3749699; 658211, 3749682; 658184, 3749655; 658140, 3749634; 658119, 3749610; 658074, 3749624; 658024, 3749603; 657999, 3749549; 657932, 3749492; 657916, 3749492; 657904, 3749509; 657912, 3749527; 657933, 3749545; 657982, 3749559; 658020, 3749623; 658072, 3749642; 658111, 3749632; 658129, 3749649; 658174, 3749667; 658201, 3749691; 658223, 3749705; 658246, 3749743; 658311, 3749811; 658336, 3749826; 658403, 3749893; 658410, 3749904; 658420, 3749908; 658434, 3749917; 658447, 3749962; 658473, 3749991; 658493, 3750013; 658509, 3750003; 658523, 3750019; 658528, 3750030; 658538, 3750043; 658564, 3750055; 658584, 3750053; 658598, 3750061; 658616, 3750068; 658657, 3750052; 658658, 3750032; 658656, 3750020; 658667, 3750002; 658666, 3749982; 658692, 3749984; 658712, 3749994; 658730, 3749994; Thence returning to 658758, 3750008.

* * * * *

Dated: April 4, 2012.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–8811 Filed 4–16–12; 8:45 am]

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FEDERAL REGISTER

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Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 2012–13 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2014 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2012–0005; FF09M21200–123–FXMB1231099BPP0L2]

RIN 1018–AX97

Migratory Bird Hunting; Proposed 2012–13 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2014 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2012–13 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, describes the proposed regulatory alternatives for the 2012–13 duck hunting seasons, requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands, and requests proposals for the 2014 spring and summer migratory bird subsistence season in Alaska. Migratory game bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: You must submit comments on the proposed regulatory alternatives for the 2012–13 duck hunting seasons on or before June 22, 2012. Following subsequent **Federal Register** notices, you will be given an opportunity to submit comments for proposed early-season frameworks by July 27, 2012, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2012. Tribes must submit proposals and related comments on or before June 1, 2012. Proposals from the Co-management Council for the 2014 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service on or before June 15, 2012.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2012–0005.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–MB–2012–0005; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept emailed or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Send your proposals for the 2014 spring and summer migratory bird subsistence season in Alaska to the Executive Director of the Co-management Council, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503; or fax to (907) 786–3306; or email to *ambcc@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street NW., Washington, DC 20240; (703) 358–1714. For information on the migratory bird subsistence season in Alaska, contact Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest, or egg'' of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are written after giving due regard to ''the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds'' and are updated annually (16 U.S.C. 704(a)). This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the Nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing migratory game bird management information for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The process for adopting migratory game bird hunting regulations, located at 50 CFR part 20, is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

The process includes two separate regulations-development schedules, based on early and late hunting season regulations. Early hunting seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (*i.e.,* dove, woodcock, *etc.*); and special early waterfowl seasons, such as teal or resident Canada geese. Early hunting seasons generally begin before October 1. Late hunting seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early or late hunting seasons. For each cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with

Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks but never more liberal.

Notice of Intent To Establish Open Seasons

This document announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2012–13 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2012–13 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2012–13 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2012–13

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations.

Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits before the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons (further described and discussed above in the Background and Overview section).

Major steps in the 2012–13 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   A. General Harvest Strategy
   B. Regulatory Alternatives
   C. Zones and Split Seasons
   D. Special Seasons/Species Management
   i. September Teal Seasons
   ii. September Teal/Wood Duck Seasons
   iii. Black Ducks
   iv. Canvasbacks
   v. Pintails
   vi. Scaup
   vii. Mottled Ducks
   viii. Wood Ducks
   ix. Youth Hunt
   x. Mallard Management Units
   xi. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
   A. Special Seasons
   B. Regular Seasons
   C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

We will publish final regulatory alternatives for the 2012–13 duck hunting seasons in mid-July. We will publish proposed early season frameworks in mid-July and late season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 16, 2012, and those for late seasons on or about September 14, 2012.

Request for 2014 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska

Background

The 1916 Convention for the Protection of Migratory Birds between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season by indigenous inhabitants.

On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule that established procedures for incorporating subsistence management into the continental migratory bird management program. These regulations, developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives, established an annual procedure to develop harvest guidelines for implementation of a spring and summer migratory bird subsistence harvest. Eligibility and inclusion requirements necessary to participate in the spring and summer migratory bird subsistence season in Alaska are outlined in 50 CFR part 92.

This proposed rule calls for proposals for regulations that will expire on August 31, 2014, for the spring and summer subsistence harvest of migratory birds in Alaska. Each year,

seasons will open on or after March 11 and close before September 1.

Alaska Spring and Summer Subsistence Harvest Proposal Procedures

We will publish details of the Alaska spring and summer subsistence harvest proposals in later **Federal Register** documents under 50 CFR part 92. The general relationship to the process for developing national hunting regulations for migratory game birds is as follows:

(a) *Alaska Migratory Bird Co-Management Council.* The public may submit proposals to the Co-management Council during the period of November 1–December 15, 2012, to be acted upon for the 2014 migratory bird subsistence harvest season. Proposals should be submitted to the Executive Director of the Co-management Council, listed above under the caption **ADDRESSES**.

(b) *Flyway Councils.*

(1) The Co-management Council will submit proposed 2014 regulations to all Flyway Councils for review and comment. The Council's recommendations must be submitted before the Service Regulations Committee's last regular meeting of the calendar year in order to be approved for spring and summer harvest beginning April 2 of the following calendar year.

(2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four Flyway Councils to discuss recommended regulations or other proposed management actions.

(c) *Service Regulations Committee.* The Co-management Council will submit proposed annual regulations to the Service Regulations Committee (SRC) for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be forwarded to the Department of the Interior for approval. Proposed annual regulations will then be published in the **Federal Register** for public review and comment, similar to the annual migratory game bird hunting regulations. Final spring and summer regulations for Alaska will be published in the **Federal Register** in the preceding winter after review and consideration of any public comments received.

Because of the time required for review by us and the public, proposals from the Co-management Council for the 2014 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2013, for Council comments and Service action at the late-season SRC meeting.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2012–13 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2011–12 final frameworks (see August 30, 2011, **Federal Register** (76 FR 54052) for early seasons and September 21, 2011, **Federal Register** (76 FR 58682) for late seasons) and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2012–13 season. We seek additional information and comments on this proposed rule.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory game bird hunting seasons, the request for tribal proposals, and the request for Alaska migratory bird subsistence seasons with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Region 1 (Idaho, Oregon, Washington, Hawaii, and the Pacific Islands)—Nanette Seto, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232–4181; (503) 231–6164.

Region 2 (Arizona, New Mexico, Oklahoma, and Texas)—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–7885.

Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)—Jane West, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, MN 55111–4056; (612) 713–5432.

Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico and Virgin Islands, South Carolina, and Tennessee)—E.J. Williams, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, GA 30345; (404) 679–4000.

Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)—Chris Dwyer, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; (413) 253–8576.

Region 6 (Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)—Dave Olson, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, CO 80225; (303) 236–8145.

Region 7 (Alaska)—Russ Oates, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; (907) 786–3423.

Region 8 (California and Nevada)—Marie Strassburger, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825–1846; (916) 414–6727.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the

establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. It is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2012–13 migratory game bird hunting season should submit a proposal that includes:

(1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;

(2) Harvest anticipated under the proposed regulations;

(3) Methods employed to monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory game bird resource; and

(5) Tribal capabilities to establish and enforce migratory game bird hunting regulations.

A tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag and possession limits and season length for migratory game birds that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2012–13 hunting season should submit their proposals as soon as possible, but no later than June 1, 2012.

Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption Consolidation of Notices. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. Such comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov*. 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual

Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available either by writing to the address indicated under **ADDRESSES** or by viewing our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Before issuance of the 2012–13 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The Office of Management and Budget has determined that this proposed rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. We also chose alternative 3 for the 2009–10, the 2010–11, and the 2011–12 seasons. At this time, we are proposing no changes to the season frameworks for the 2012–13 season, and as such, we will again consider these three alternatives. However, final frameworks will be dependent on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2012–0005.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2012–0005.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of $100 million or more. However, because this rule would establish hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these proposed regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number

1018–0023 (expires 4/30/2014). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 4/30/2013). A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking would not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules would allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in this proposed rule, we solicit proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2012–13 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority

The rules that eventually will be promulgated for the 2012–13 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 7, 2012.

Eileen Sobeck,

Acting Assistant Secretary for Fish Wildlife and Parks.

Proposed 2012–13 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. No changes from the final 2011–12 frameworks established on August 30 and September 21, 2011 (76 FR 54052 and 76 FR 58682) are being proposed at this time. Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/ Species Management. Only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

We propose to continue using adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2012–13 season. AHM permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use AHM to evaluate four alternative regulatory levels for duck hunting based on the population status of mallards. (We enact special hunting restrictions for species of special concern, such as canvasbacks, scaup, and pintails).

Pacific, Central and Mississippi Flyways

Until 2008, we based the prescribed regulatory alternative for the Pacific, Central, and Mississippi Flyways on the status of mallards and breeding-habitat conditions in central North America (Federal survey strata 1–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). In 2008, we based hunting regulations upon the breeding stock that contributes primarily to each Flyway. In the Pacific Flyway, we set hunting regulations based on the status and dynamics of a newly defined stock of ''western'' mallards. Western mallards are those breeding in Alaska and the northern Yukon Territory (as based on Federal surveys in strata 1–12), and in California

and Oregon (as based on State-conducted surveys). In the Central and Mississippi Flyways, we set hunting regulations based on the status and dynamics of mid-continent mallards. Mid-continent mallards are those breeding in central North America not included in the Western mallard stock, as defined above.

For the 2012–13 season, we recommend continuing to use independent optimization to determine the optimum regulations. This means that we would develop regulations for mid-continent mallards and western mallards independently, based upon the breeding stock that contributes primarily to each Flyway. We detailed implementation of this new AHM decision framework in the July 24, 2008, **Federal Register** (73 FR 43290).

Atlantic Flyway

Since 2000, we have prescribed a regulatory alternative for the Atlantic Flyway annually using an eastern mallard AHM decision framework that is based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region). We recommend continuation of the AHM process for the 2012–13 season. However, we are proposing several changes related to the population models used in the eastern mallard AHM protocol.

The AHM process used to date to set harvest regulations for eastern mallards is based on an objective of maximizing long-term cumulative harvest and using predictions from six population models representing different hypotheses about the recruitment process and sources of bias in population predictions. The Atlantic Flyway Council and the Service have evaluated the performance of the model set used to support eastern mallard AHM and found that the current models used to predict survival (as a function of harvest) and recruitment (as a function of breeding population size) did not perform adequately, resulting in a consistent over-prediction of mallard population size in 5 of the last 6 years. Consequently, we believe that it is necessary to update those population models with more contemporary survival and recruitment information and revised hypotheses about the key factors affecting eastern mallard population dynamics. Further, the Flyway is also re-considering harvest management objectives and assessing the spatial designation of the eastern mallard breeding population. Recognizing that the development of a fully revised AHM protocol will likely take several years to complete, we have developed a revised model set to inform eastern mallard harvest decisions until all of the updates to the eastern mallard AHM protocol are completed. We propose to use this model set to inform eastern mallard harvest regulations until a fully revised AHM protocol is finalized. Further details on the revised models and results of simulations of this interim harvest policy are available on our Web site at *http://www.fws.gov/migratorybirds*, or at *http://www.regulations.gov*.

Final 2012–13 AHM Protocol

We will detail the final AHM protocol for the 2012–13 season in the early-season proposed rule, which we will publish in mid-July (see Schedule of Regulations Meetings and **Federal Register** Publications at the end of this proposed rule for further information). We will propose a specific regulatory alternative for each of the Flyways during the 2012–13 season after survey information becomes available in late summer. More information on AHM is located at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/AHM/AHM-intro.htm.*

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. In 2002, based upon recommendations from the Flyway Councils, we extended framework dates in the ''moderate'' and ''liberal'' regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24; and changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest before considering any subsequent use (67 FR 12501, March 19, 2002).

For 2012–13, we are proposing to maintain the same regulatory alternatives that were in effect last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. We will announce final regulatory alternatives in mid-July. We will accept public comments until June 24, 2012, and you should send your comments to an address listed under the caption **ADDRESSES**.

C. Zones and Split Seasons

We annually issue regulations permitting the sport hunting of migratory birds. Zones and split seasons are ''special regulations'' designed to distribute hunting opportunities and harvests according to temporal, geographic, and demographic variability in waterfowl and other migratory game bird populations. For ducks, States have been allowed the option of dividing their allotted hunting days into segments to take advantage of species-specific peaks of abundance or to satisfy hunters in different areas who want to hunt during the peak of waterfowl abundance in their area. States are also allowed the establishment of independent seasons in two or more zones within States for the purpose of providing more equitable distribution of harvest opportunity for hunters throughout the State.

In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, we conducted a cooperative review and evaluation of the historical use of zone/split options. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate experimental controls. Consequently, we established guidelines to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5-year intervals.

In 1996, we revised the guidelines to provide States with greater flexibility in using their zone/split arrangements. Last year, we stated that while we continued to support the use of guidelines for providing a stable framework for controlling the number of changes to zone/split options, we revised the guidelines in response to a consensus position among all the Flyway Councils and the States' desires for additional flexibility in addressing concerns of the hunting public. We also expressed our support for the recommendations from the 2008 Future of Waterfowl Management Workshop that called for a greater emphasis on the effects of management actions on the

hunting public. Specific details of those revisions are contained and discussed in the August 26, 2011, **Federal Register** (75 FR 53536).

When making these revisions, we noted that existing human dimensions data on the relationship of harvest regulations, and specifically zones and splits, to hunter recruitment, retention, and/or satisfaction are equivocal or lacking. In the face of uncertainty over the effects of management actions, the waterfowl management community has broadly endorsed adaptive management and the principles of informed decision-making as a means of accounting for and reducing that uncertainty. The necessary elements of informed decision-making include: clearly articulated objectives, explicit measurable attributes for objectives, identification of a suite of potential management actions, some means of predicting the consequences of management actions with respect to stated objectives, and, finally, a monitoring program to compare observations with predictions as a basis for learning, policy adaptation, and more informed decision-making. Currently, none of these elements are used to support decision-making that involves human dimensions considerations. Accordingly, we saw these revisions to the criteria as an opportunity to advance an informed decision-making framework that explicitly considers human dimensions issues.

To that end, we requested that the National Flyway Council (NFC) marshal the expertise and resources of the Human Dimensions Working Group to develop explicit human dimensions objectives related to expanding zone and split options and a study plan to evaluate the effect of the proposed action in achieving those objectives. The study plan that the NFC agreed to implement includes hypotheses and specific predictions about the effect of changing zone/split criteria on stated human dimensions objectives, and monitoring and evaluation methods that would be used to test those predictions. We believe that insights gained through such an evaluation would be invaluable in furthering the ongoing dialogue regarding fundamental objectives of waterfowl management and an integrated and coherent decision framework for advancing those objectives, and look forward to the NFC's report detailing the results of the evaluation.

As we also stated last year, those States that were capable of implementing these new guidelines immediately were allowed to do so. However, for those States not able to implement changes last year, we were committed to extending the current open season into 2012. Thus, we asked that States provide us with any changes to their zone and split season configuration by May 1, 2012, for use during the 2012–13 season. After this open period, the next regularly scheduled open season for changes to zone and split season configurations will be in 2016, for use during the 2016–20 period. In order to allow sufficient time for States to solicit public input regarding their selections of zone and split season configurations in 2016, we will reaffirm the criteria during the 2015 late-season regulations process. At that time we will notify States that changes to zone and split season configurations should be provided to the Service by May 1, 2016.

Guidelines for Duck Zones and Split Seasons

The following zone/split-season guidelines apply only for the *regular* duck season:

(1) A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

(2) Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

(3) Only minor (less than a county in size) boundary changes will be allowed for any grandfathered arrangement, and changes are limited to the open season.

(4) Once a zone/split option is selected during an open season, it must remain in place for the following 5 years.

Any State may continue the configuration used in the previous 5-year period. If changes are made, the zone/split-season configuration must conform to one of the following options:

(1) No more than four zones with no splits,

(2) Split seasons (no more than 3 segments) with no zones, or

(3) No more than three zones with the option for 2-way (2-segment) split seasons in one, two, or all zones.

Grandfathered Zone/Split Arrangements

When we first implemented the zone/split guidelines in 1991, several States had completed experiments with zone/split arrangements different from our original options. We offered those States a one-time opportunity to continue (''grandfather'') those arrangements, with the stipulation that only minor changes could be made to zone boundaries. If any of those States now wish to change their zone/split arrangement:

(1) The new arrangement must conform to one of the 3 options identified above; and

(2) The State cannot go back to the grandfathered arrangement that it previously had in place.

Management Units

We will continue to utilize the specific limitations previously established regarding the use of zone and split seasons in special management units, including the High Plains Mallard Management Unit. We note that the original justification and objectives established for the High Plains Mallard Management Unit provided for additional days of hunting opportunity at the end of the regular duck season. In order to maintain the integrity of the management unit, current guidelines prohibit simultaneous zoning and/or 3-way split seasons within a management unit and the remainder of the State. Removal of this limitation would allow additional proliferation of zone/split configurations and compromise the original objectives of the management unit.

The EA and Finding of No Significant Impact (FONSI) on the revised guidelines is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** in the preamble of this proposed rule or by viewing on our Web site at *http://www.fws.gov/migratorybirds*, or at *http://www.regulations.gov*.

D. Special Seasons/Species Management

i. September Teal Seasons

In 2009, we agreed to allow an additional 7 days during the special September teal season in the Atlantic Flyway (74 FR 43009). In addition, we requested that a new assessment of the cumulative effects of all teal harvest, including harvest during special September seasons be conducted. Furthermore, we indicated that we would not agree to any further modifications of special September teal seasons or other special September duck seasons until a thorough assessment of the harvest potential had been completed for both blue-winged and green-winged teal, as well as an assessment of the impacts of current special September seasons on these two species. Cinnamon teal were subsequently included in this assessment. We have been working in cooperation with the four Flyway Councils to conduct this technical work. The original goal was to have this work

completed within 3 years; however, considerable population modeling work remains to be done. Thus, we expect this technical work to be completed by late 2012 and a final assessment report to be completed in early 2013.

xii. Other

Last year, the Central Flyway Council and the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the daily and possession bag limits for redheads during the 2011–12 duck hunting season be 3 and 6, respectively (76 FR 58682; September 21, 2011). While we recognized the desire to provide additional hunting opportunity for redheads, we did not support the recommendations to increase the daily bag limit of redheads from 2 to 3 birds. As we have done with other species (such as canvasbacks, pintails, etc.), we believed that changes to redhead daily bag limits should only be considered with guidance from an agreed-upon harvest strategy that is supported by all four Flyway Councils and the Service. Thus, we suggested that the Flyways work collaboratively to develop a redhead harvest strategy, which would include: (1) Clearly defined and agreed-upon management objectives; (2) clearly defined regulatory alternatives; and (3) a model that can be used to predict population responses to harvest mortality. We further stated that if the development of a harvest strategy for redheads was a priority for the Flyways, a conceptual framework for a redhead harvest strategy could be discussed at the Harvest Management Working Group meeting in November 2011. We also noted that if the Flyway Councils wish to implement a redhead harvest strategy for the 2012–13 season, a draft strategy needed to be available for review and discussion by the February 2012 SRC meeting, finalized by the Flyways Councils at their March 2012 meetings, and forwarded as a recommendation for SRC consideration at the early season SRC meeting (June 2012).

We discussed the process and development of a draft redhead harvest strategy at the February 1, 2012, SRC meeting (noticed in a January 11, 2012, **Federal Register** (77 FR 1718)). Subsequently, in a February 6, 2012 letter, the Central Flyway Council formally provided us with a draft redhead harvest management strategy for our review and consideration. As we discussed at the February 1 SRC meeting, in order to be implemented this year, as with all harvest strategies for late season species, the harvest strategy would need to be finalized and approved by the SRC at the June 20–21 SRC meeting. At this time, we have made no decision on whether to propose a redhead harvest strategy for the 2012–13 season, but are providing the draft strategy to the public for their review, consideration, and comment. The draft strategy is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** in the preamble of this proposed rule or by viewing on our Web site at *http://www.fws.gov/migratorybirds,* or at *http://www.regulations.gov*. Any decision on whether to propose a harvest management strategy for redheads for implementation in the 2012–13 season, and the specifics of any such strategy, would be provided to the public in a separate supplemental proposed rule (see the diagram at the end of this proposed rule for major steps in the 2012–13 regulatory cycle).

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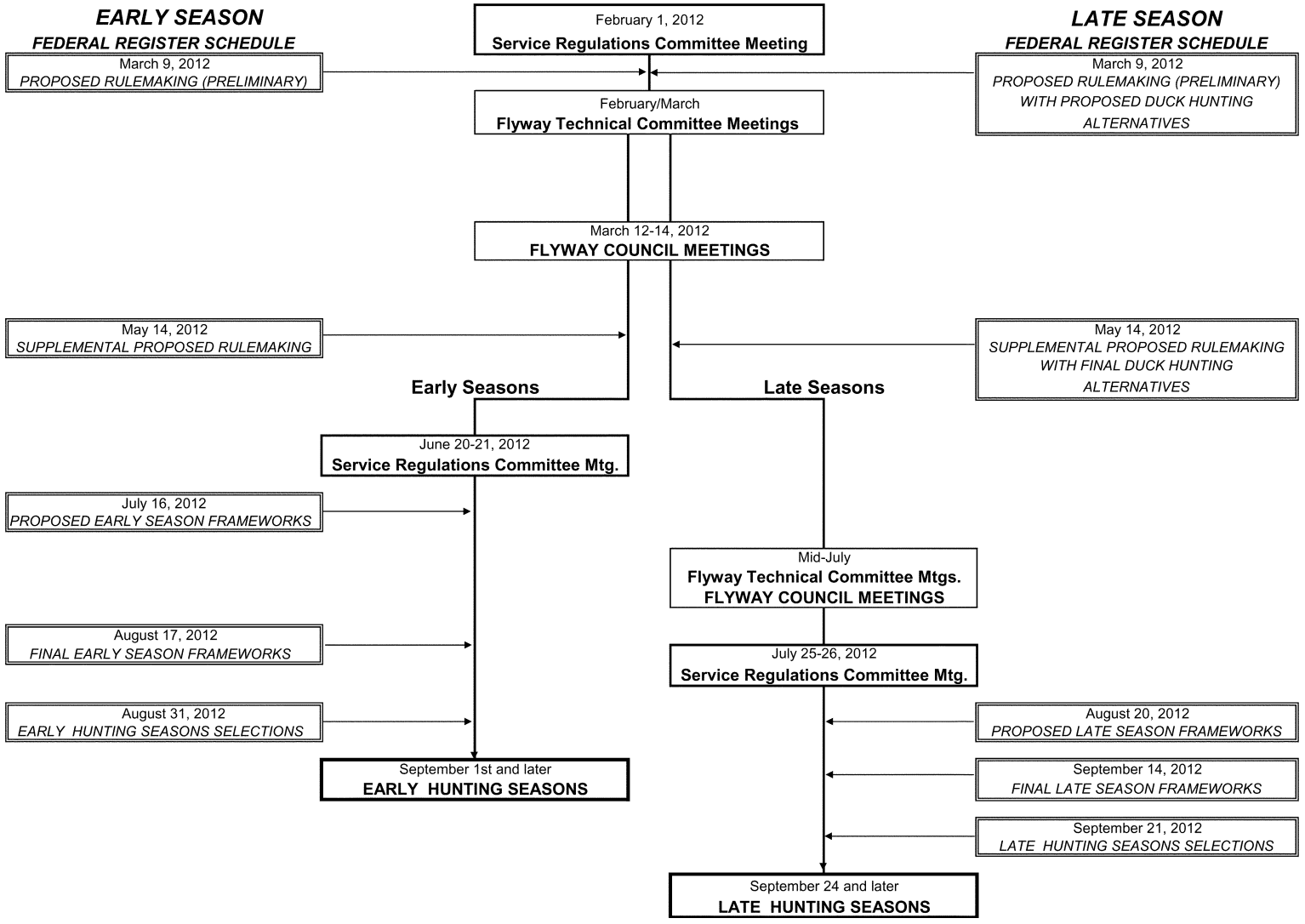
2012 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2012-13 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/ Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.

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FEDERAL REGISTER

Vol. 77 Tuesday,
No. 74 April 17, 2012

Part VII

The President

Executive Order 13605—Supporting Safe and Responsible Development of Unconventional Domestic Natural Gas Resources

Federal Register
Vol. 77, No. 74
Tuesday, April 17, 2012

Presidential Documents

Title 3—

The President

Executive Order 13605 of April 13, 2012

Supporting Safe and Responsible Development of Unconventional Domestic Natural Gas Resources

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to coordinate the efforts of Federal agencies responsible for overseeing the safe and responsible development of unconventional domestic natural gas resources and associated infrastructure and to help reduce our dependence on oil, it is hereby ordered as follows:

Section 1. *Policy.* In 2011, natural gas provided 25 percent of the energy consumed in the United States. Its production creates jobs and provides economic benefits to the entire domestic production supply chain, as well as to chemical and other manufacturers, who benefit from lower feedstock and energy costs. By helping to power our transportation system, greater use of natural gas can also reduce our dependence on oil. And with appropriate safeguards, natural gas can provide a cleaner source of energy than other fossil fuels.

For these reasons, it is vital that we take full advantage of our natural gas resources, while giving American families and communities confidence that natural and cultural resources, air and water quality, and public health and safety will not be compromised.

While natural gas production is carried out by private firms, and States are the primary regulators of onshore oil and gas activities, the Federal Government has an important role to play by regulating oil and gas activities on public and Indian trust lands, encouraging greater use of natural gas in transportation, supporting research and development aimed at improving the safety of natural gas development and transportation activities, and setting sensible, cost-effective public health and environmental standards to implement Federal law and augment State safeguards.

Because efforts to promote safe, responsible, and efficient development of unconventional domestic natural gas resources are underway at a number of executive departments and agencies (agencies), close interagency coordination is important for effective implementation of these programs and activities. To formalize and promote ongoing interagency coordination, this order establishes a high-level, interagency working group that will facilitate coordinated Administration policy efforts to support safe and responsible unconventional domestic natural gas development.

Sec. 2. *Interagency Working Group to Support Safe and Responsible Development of Unconventional Domestic Natural Gas Resources.* There is established an Interagency Working Group to Support Safe and Responsible Development of Unconventional Domestic Natural Gas Resources (Working Group), to be chaired by the Director of the Domestic Policy Council, or a designated representative.

(a) *Membership.* In addition to the Chair, the Working Group shall include deputy-level representatives or equivalent officials, designated by the head of the respective agency or office, from:

(i) the Department of Defense;

(ii) the Department of the Interior;

(iii) the Department of Agriculture;

(iv) the Department of Commerce;

(v) the Department of Health and Human Services;

(vi) the Department of Transportation;

(vii) the Department of Energy;

(viii) the Department of Homeland Security;

(ix) the Environmental Protection Agency;

(x) the Council on Environmental Quality;

(xi) the Office of Science and Technology Policy;

(xii) the Office of Management and Budget;

(xiii) the National Economic Council; and

(xiv) such other agencies or offices as the Chair may invite to participate.

(b) *Functions.* Consistent with the authorities and responsibilities of participating agencies and offices, the Working Group shall support the safe and responsible production of domestic unconventional natural gas by performing the following functions:

(i) coordinate agency policy activities, ensuring their efficient and effective operation and facilitating cooperation among agencies, as appropriate;

(ii) coordinate among agencies the sharing of scientific, environmental, and related technical and economic information;

(iii) engage in long-term planning and ensure coordination among the appropriate Federal entities with respect to such issues as research, natural resource assessment, and the development of infrastructure;

(iv) promote interagency communication with stakeholders; and

(v) consult with other agencies and offices as appropriate.

Sec. 3. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
April 13, 2012.

[FR Doc. 2012–9473
Filed 4–16–12; 3:00 pm]
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