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FEDERAL REGISTER

Vol. 77 Thursday,
No. 159 August 16, 2012

Pages 49345–49700

OFFICE OF THE FEDERAL REGISTER

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Title 3—

The President

Executive Order 13623 of August 10, 2012

Preventing and Responding to Violence Against Women and Girls Globally

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* (a) Recognizing that gender-based violence undermines not only the safety, dignity, and human rights of the millions of individuals who experience it, but also the public health, economic stability, and security of nations, it is the policy and practice of the executive branch of the United States Government to have a multi-year strategy that will more effectively prevent and respond to gender-based violence globally.

(b) Under the leadership of my Administration, the United States has made gender equality and women's empowerment a core focus of our foreign policy. This focus is reflected in our National Security Strategy, the Presidential Policy Directive on Global Development, and the 2010 U.S. Quadrennial Diplomacy and Development Review. Evidence demonstrates that women's empowerment is critical to building stable, democratic societies; to supporting open and accountable governance; to furthering international peace and security; to growing vibrant market economies; and to addressing pressing health and education challenges.

(c) Preventing and responding to gender-based violence is a cornerstone of my Administration's commitment to advance gender equality and women's empowerment. Such violence significantly hinders the ability of individuals to fully participate in, and contribute to, their communities—economically, politically, and socially. It is a human rights violation or abuse; a public health challenge; and a barrier to civic, social, political, and economic participation. It is associated with adverse health outcomes, limited access to education, increased costs relating to medical and legal services, lost household productivity, and reduced income, and there is evidence it is exacerbated in times of crisis, such as emergencies, natural disasters, and violent conflicts.

(d) The executive branch multi-year strategy for preventing and responding to gender-based violence is set forth in the United States Strategy to Prevent and Respond to Gender-based Violence Globally (Strategy). The Strategy both responds to and expands upon the request in section 7061 of House conference report 112–331 accompanying the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I of Public Law 112–74), for the executive branch to develop a multi-year strategy to prevent and respond to violence against women and girls in countries where it is common.

Sec. 2. *Creating an Interagency Working Group.* There is established an Interagency Working Group (Working Group) to address gender-based violence, which shall coordinate implementation of the Strategy by the executive departments and agencies that are members of the Working Group (member agencies) in accordance with the priorities set forth in section 3 of this order.

(a) The Working Group shall be co-chaired by the Secretary of State and the Administrator of the United States Agency for International Development (Co-Chairs). In addition to the Co-Chairs, the Working Group shall consist of representatives from:

(i) the Department of the Treasury;

(ii) the Department of Defense;
(iii) the Department of Justice;
(iv) the Department of Labor;
(v) the Department of Health and Human Services;
(vi) the Department of Homeland Security;
(vii) the Office of Management and Budget;
(viii) the National Security Staff;
(ix) the Office of the Vice President;
(x) the Peace Corps;
(xi) the Millennium Challenge Corporation;
(xii) the White House Council on Women and Girls; and
(xiii) other executive departments, agencies, and offices, as designated by the Co-Chairs.

(b) Within 120 days of the date of this order, the Co-Chairs shall convene the first meeting of the Working Group to:

(i) establish benchmarks to implement the Strategy; and
(ii) determine a timetable for periodically reviewing those benchmarks.

(c) Within 18 months of the date of this order, the Working Group shall complete a progress report for submission to the Co-Chairs evaluating the U.S. Government's implementation of the Strategy.

(d) Within 3 years of the date of this order, the Working Group shall complete a final evaluation for submission to the Co-Chairs of the U.S. Government's implementation of the Strategy.

(e) Within 180 days of completing its final evaluation of the Strategy in accordance with subsection (d) of this section, the Working Group shall update or revise the Strategy to take into account the information learned and the progress made during and through the implementation of the Strategy.

(f) The activities of the Working Group shall, consistent with law, take due account of existing interagency bodies and coordination mechanisms and will coordinate with such bodies and mechanisms where appropriate in order to avoid duplication of efforts.

Sec. 3. *Strategy to Prevent and Respond to Gender-based Violence Globally.* Member agencies shall implement the Strategy to prevent and respond to gender-based violence globally based on the following priorities reflected in the Strategy:

(a) *Increasing Coordination of Gender-based Violence Prevention and Response Efforts Among U.S. Government Agencies and with Other Stakeholders.*

(i) Member agencies shall draw upon each other's expertise, responsibility, and capacity to provide a comprehensive and multi-faceted approach to issues relating to gender-based violence.

(ii) Member agencies shall deepen engagement and coordination with other governments; international organizations, including multilateral and bilateral actors; the private sector; and civil society organizations, such as representatives of indigenous and marginalized groups, foundations, community-based, faith-based, and regional organizations (including those that serve survivors), labor unions, universities, and research organizations. The Working Group shall consider a range of mechanisms by which these stakeholders may provide input to the U.S. Government on its role in preventing and responding to gender-based violence globally.

(b) *Enhancing Integration of Gender-based Violence Prevention and Response Efforts into Existing U.S. Government Work.* Member agencies shall more comprehensively integrate gender-based violence prevention and response programming into their foreign policy and foreign assistance efforts. This integration shall also build on current efforts that address gender-based violence, such as the U.S. National Action Plan on Women, Peace, and Security; the Global Health Initiative; the President's Emergency Plan for AIDS Relief; the U.S. Government's work to counter trafficking in persons;

and the U.S. Government's humanitarian response efforts. The Working Group shall coordinate these different efforts as they relate to gender-based violence to leverage the most effective programs and to avoid duplication.

(c) *Improving Collection, Analysis, and Use of Data and Research to Enhance Gender-based Violence Prevention and Response Efforts.* Member agencies shall work to promote ethical and safe research, data collection, and evidence-based analyses relating to different forms of gender-based violence and prevention and response efforts at the country and local level. This work will include the development of a research agenda that assesses agencies' research and data collection capabilities, needs, and gaps; builds upon existing data and research; and is coordinated with the work of other organizations that are prioritizing global gender-based violence research. Member agencies shall prioritize the monitoring and evaluation of gender-based violence prevention and response interventions to determine their effectiveness. Member agencies shall systematically identify and share best practices, lessons learned, and research within and across agencies. Member agencies, as appropriate, shall seek to develop public-private partnerships to support U.S. Government research initiatives and strategic planning efforts.

(d) *Enhancing or Expanding U.S. Government Programming that Addresses Gender-based Violence.* Consistent with the availability of appropriations, the U.S. Government shall support programming that provides a comprehensive and multi-sector approach to preventing and responding to gender-based violence; shall consider replicating or expanding successful programs; and shall assess the feasibility of a focused, coordinated, comprehensive, and multi-sector approach to gender-based violence in one or more countries.

Sec. 4. *General Provisions.* (a) 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.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Independent agencies are strongly encouraged to comply with this order.

(d) 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,
Washington, August 10, 2012.

[FR Doc. 2012–20259
Filed 8–15–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0773]

RIN 1625–AA00

Safety Zone; Chicago Air and Water Show, Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary deviation to the Chicago Air and Water Show safety zone on Lake Michigan near Lincoln Park. This action is necessary to accurately reflect the enforcement dates and times for this safety zone due to changes made in this year's air show. This safety zone is intended to restrict vessels from a portion of Lake Michigan during the Chicago Air and Water Show. This safety zone is necessary to protect spectators and vessels from the hazards associated with an air show over water.

DATES: This rule will be effective from August 16, 2012, until August 20, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0773]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7148, email *Joseph.P.McCollum@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.

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NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this year's event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with an air show, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

Between 9:00 a.m. until 6:00 p.m. on the third Thursday, Friday, Saturday, and Sunday of August 2012, an air show will be held over Lake Michigan in Chicago, IL. The Captain of the Port, Sector Lake Michigan, has determined that an air show with associated acrobatic maneuvers proximate to a gathering of watercraft and personnel pose a significant risk to public safety and property. Such hazards include aircraft malfunctions and subsequent crash and falling or burning debris. This temporary rule makes a temporary deviation to the Chicago Air and Water Show safety zone, which is established at 33 CFR 165.929 (64).

C. Discussion of Rule

Changes have been made to the times and dates previously codified for this event; these changes were necessary to provide the public with the most up to date information as received from the sponsoring organization. With the aforementioned hazards in mind, the Captain of the Port, Sector Lake Michigan, has determined that this temporary deviation to the times and dates of this safety zone is necessary to ensure the safety of spectators and vessels during the air show. This zone will be enforced from 9 a.m. until 6 p.m. on the third Thursday, Friday, Saturday, and Sunday of August 2012. The safety zone will encompass all waters and adjacent shoreline of Lake Michigan and Chicago Harbor bounded by a line drawn from 41°55′54″ N at the shoreline, then east to 41°55′54″ N, 087°37′12″ W, then southeast to 41°54′00″ N, 087°36′00″ W (NAD 83), then southwestward to the northeast corner of the Jardine Water Filtration Plant, then due west to the shore. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of

potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan, Chicago, IL on the third Thursday, Friday, Saturday, and Sunday of August 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only nine hours on these days. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant

Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0773 to read as follows:

§ 165.T09–0773 Safety Zone; Chicago Air and Water Show, Lake Michigan, Chicago, IL.

(a) *Location.* The safety zone will encompass all waters and adjacent shoreline of Lake Michigan and Chicago Harbor bounded by a line drawn from 41°55′54″ N at the shoreline, then east to 41°55′54″ N, 087°37′12″ W, then southeast to 41°54′00″ N, 087°36′00″ W (NAD 83), then southwestward to the northeast corner of the Jardine Water Filtration Plant, then due west to the shore.

(b) *Enforcement period.* This regulation is effective and will be enforced on the third Thursday, Friday, Saturday, and Sunday of August 2012 from 9:00 a.m. until 6:00 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Sector Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his on-scene representative.

Dated: August 7, 2012.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2012–20094 Filed 8–15–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0771]

RIN 1625–AA00

Safety Zone; Port Huron Float-Down, St. Clair River, Port Huron, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the St. Clair River, Port Huron, MI. This zone is intended to restrict vessels from a portion of the St. Clair River during the Port Huron Float-Down. Though this is an unsanctioned, non-permitted event, this temporary safety zone is necessary to protect spectators and vessels from the hazards associated with river tubing and Float-Down events.

DATES: This rule is effective from 11 a.m. to 8 p.m. on August 19, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0771]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, email *Adrian.F.Palomeque@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this year's event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with this Coast Guard exercise.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would be impracticable and contrary to the public interest.

As is discussed further below, the Port Huron Float-Down has taken place each of the last three years. During each year's event, the Float-Down has drawn thousands of floaters and spectators. Because of the high concentration of floaters and spectators, the Coast Guard has previously established a safety zone in the location of the Float-Down to better protect the public. For example, in 2011, the Coast Guard enforced a

safety on August 21st (76 FR 52269). Consequently, not only is it impracticable and contrary to the public interest to delay this rule, a notice comment period and delayed effective date are also unnecessary because of the public's expected awareness of the Coast Guard's safety zone.

B. Basis and Purpose

On August 19, 2012, a non-permitted public event has been advertised over various social-media sites in which a large number of persons may float down a segment of the St. Clair River, using inner tubes and other similar floatation devices. The 2012 Float-Down event will occur between about 11 a.m. and 8 p.m. on August 19, 2012. This event took place in 2009, 2010, and 2011. Although it did not receive a state or federal permit over these past years, the event drew in over 3,000 participants. Despite the plan put together by the federal, state and local officials, emergency responders and law enforcement officials were overwhelmed with medical emergencies, people drifting across the international border, and people trespassing on residential property when trying to get out of the water before the designated finish line. Promotional information for the event continues to be published, and more than 3,000 people are anticipated to float down the river this year.

Based on the amount of public participation and safety concerns identified in 2009, 2010, and 2011, the Captain of the Port Detroit has determined that the 2012 Float-Down poses significant risks to public safety and property. The likely combination of large numbers of participants, strong river currents, limited rescue resources, and difficult emergency response scenarios could easily result in serious injuries or fatalities to Float-Down participants and spectators. Establishing a safety zone to control vessel entry into the location of the proposed Float-Down will help ensure the safety of persons and property and minimize the associated risks.

C. Discussion of Rule

This safety zone is necessary to ensure the safety of spectators, vessels, and the public from the hazards associated with the Port Huron Float-Down. This rule will be in effect and the safety zone will be enforced from 11 a.m. to 8 p.m. on August 19, 2012.

The safety zone will begin at Lighthouse Beach and encompass all U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00′25″ N; 082°25′20″ W, extending east to the international boundary to a point at position 43°00′25″ N; 082°25′02″ W, following south along the international boundary to a point at position 42°54′30″ N; 082°27′41″ W, extending west to a point on land (just north of Stag Island) at position 42°54′30″ N; 082°27′58″ W, and following north along the U.S. shoreline to the point of origin. All geographic coordinates are North American Datum of 1983 [NAD 83].

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the St. Clair River on August 19, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only nine hours on one day. Furthermore, the safety zone may conclude earlier if the Captain of the Port determines that the safety hazards have been mitigated before 8:00 p.m. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0771 to read as follows:

§ 165.T09–0771 Safety Zone; Port Huron Float-Down, St. Clair River, Port Huron, MI.

(a) *Location.* The safety zone will begin at Lighthouse Beach and encompass all U.S. waters of the St. Clair River, Port Huron, MI, bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00′25″ N; 082°25′20″ W, extending east to the international boundary to a point at position 43°00′25″ N; 082°25′02″ W, following south along the international boundary to a point at position 42°54′30″ N; 082°27′41″ W, extending west to a point on land (just north of Stag Island) at position 42°54′30″ N; 082°27′58″ W, and following north along the U.S. shoreline to the point of origin. (DATUM: NAD 83).

(b) *Effective and enforcement period.* This regulation is effective and will be enforced from 11 a.m. until 8 p.m. on August 19, 2012.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit, or his on-scene representative.

Dated: August 6, 2012.

J.E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2012–20097 Filed 8–15–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2011–0058]

RIN 0651–AC63

Revision of Patent Term Adjustment Provisions Relating to Appellate Review

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is revising the patent term adjustment provisions of the rules of practice in patent cases to better reflect the period of appellate review. The patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA) provide for patent term adjustment if, *inter alia,* the issuance of the patent was delayed due to appellate review by the Board of Patent Appeals and Interferences (Board) or by a Federal court, and the patent was issued under a decision in the review reversing an adverse determination of patentability. The Office is specifically revising the rules of practice to indicate that the period of appellate review under the patent term adjustment provisions of the AIPA begins when jurisdiction over the application passes to the Board rather than the date on which a notice of appeal to the Board is filed.

DATES: *Effective date:* This final rule is effective September 17, 2012.

Applicability date: The amendments to 37 CFR 1.703 in this final rule are applicable to any application in which a notice of allowance is issued on or after September 17, 2012, and any patent issuing thereon. The amendment to 37 CFR 1.704 is applicable with respect to the filing of an appeal brief in any application in which a notice of appeal under 37 CFR 41.31 is filed on or after September 17, 2012.

FOR FURTHER INFORMATION CONTACT: Kery A. Fries, Senior Legal Advisor, Office of Patent Legal Administration, by telephone at 571–272–7757, by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Kery A. Fries.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose: The Office is revising the patent term adjustment provisions of the rules of practice in patent cases to better reflect the period of appellate review.

Summary of Major Provisions: The final rule will result in patent term adjustment determinations that better reflect any delays an application experiences during the appellate review process. The final rule defines the day that an appellate review period begins for patent term adjustment purposes as the day that jurisdiction over the patent application passes to the Board. Also, the final rule provides applicants with a three-month time period for filing a compliant appeal brief before the Office will consider applicant as having failed to engage in reasonable efforts to conclude processing or examination of the application.

Costs and Benefits: This rulemaking is not significant or economically significant under Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

Background

The Uruguay Round Agreements Act (URAA) amended 35 U.S.C. 154 to provide that the term of a patent ends on the date that is twenty years from the filing date of the application, or the earliest filing date for which a benefit is claimed under 35 U.S.C. 120, 121, or 365(c). *See* Public Law 103–465, § 532(a)(1), 108 Stat. 4809, 4983–85 (1994). The URAA also contained provisions, codified at 35 U.S.C. 154(b), for patent term extension due to certain examination delays. Under the patent term extension provisions of 35 U.S.C. 154(b) as amended by the URAA, an applicant is entitled to patent term extension for delays due to interference, secrecy order, or successful appellate review. *See* 35 U.S.C. 154(b) (1995). The Office implemented the patent term extension provisions of the URAA in a final rule published in April of 1995. *See Changes to Implement 20-Year Patent Term and Provisional Applications,* 60 FR 20195 (Apr. 25, 1995) (twenty-year patent term final rule).

The American Inventors Protection Act of 1999 (AIPA) further amended 35 U.S.C. 154(b) to expand the list of administrative delays which may give rise to patent term adjustment (characterized as ''patent term adjustment'' in the AIPA). *See* Public Law 106–113, 113 Stat. 1501, 1501A–552 through 1501A–591 (1999). Specifically, under the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by the AIPA, an applicant is entitled to patent term adjustment for the following reasons: (1) If the Office fails to take certain actions during the examination and issue process within specified time frames (known as the ''A'' provision, being in 35 U.S.C. 154(b)(1)(A)); (2) subject to certain enumerated examples, if the Office fails to issue a patent within three years of the actual filing date of the application in the United States (known as the ''B'' provision, being in 35 U.S.C. 154(b)(1)(B)); and (3) for delays due to interference, secrecy order, or successful appellate review (known as the ''C'' provision, being in 35 U.S.C. 154(b)(1)(C)). *See* 35 U.S.C. 154(b)(1). The Office implemented the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by the AIPA in a final rule published in September of 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term,* 65 FR 56365 (Sept. 18, 2000) (patent term adjustment final rule).

The patent term adjustment provisions of the AIPA apply to original (*i.e.,* non-reissue) utility and plant applications filed on or after May 29, 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term,* 65 FR at 56367. The patent term extension provisions of the URAA (for delays due to secrecy order, interference or successful appellate review) continue to apply to original utility and plant applications filed on or after June 8, 1995, and before May 29, 2000. *See id.*

In April 2011, the Office proposed to revise the patent term extension and adjustment provisions of the URAA and AIPA to provide, with certain exceptions, that the reopening of prosecution by an examiner would be considered a ''decision in the review reversing an adverse determination of patentability,'' since in many such situations, the Office decision in the pre-Board review reveals some weakness in the adverse patentability determination from which the appeal was taken, making it appropriate to treat such situations as a ''decision in the review reversing an adverse determination of patentability'' under the patent term adjustment and extension provisions. *See Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements,* 76 FR 18990 (Apr. 6, 2011). The Office received several comments suggesting that a better approach would be to treat the appellate review period as beginning when jurisdiction passes to the Board, rather than on the date a notice of appeal to the Board was filed. This approach would give applicants the possibility of obtaining patent term adjustment under the ''B'' provision for Office delays during the pre-Board

process (including when prosecution is reopened). Specifically, the Office would not subtract from the ''B'' period the period of time from the filing of the notice of appeal to the earlier of the filing of a reply brief or the expiration of the period to file the reply brief.

In November 2011, the Office published a final rule concerning practice before the Board in *ex parte* appeals, and defined that jurisdiction of an appeal passes to the Board at the earlier of the filing of the reply brief or upon the expiration of the time period for filing a reply brief. *See Rules Of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals* 76 FR 72270, 72273 (Nov. 2011).

In December 2011, the Office published a notice seeking public comment on a proposal to change its interpretation of the appellate review language of the ''B'' provision (35 U.S.C. 154(b)(1)(B)(ii)) to provide that appellate review begins on the date on which jurisdiction over the application passes to the Board under 37 CFR 41.35 (rather than the date on which a notice of appeal under 35 U.S.C. 134 was filed as in the current rule). *See Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review,* 76 FR 81432 (Dec. 28, 2011). The December 2011 notice of proposed rulemaking indicated that to change the interpretation of the appellate review language of the ''B'' provision without also changing the appellate review language of the ''C'' provision (35 U.S.C. 154(b)(1)(C)(iii)) would require the Office to interpret the same statutory term, ''appellate review by the Board,'' appearing in two closely related provisions, in two different ways, violating well-recognized canon of statutory interpretation that the same terms appearing in related statutory provisions are to be given the same meaning. *See Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review,* 76 FR at 81434 (citing *Yi* v. *Fed. Bureau of Prisons,* 412 F.3d 526, 531 (4th Cir. 2005)). The December 2011 notice of proposed rulemaking further indicated a later beginning of the appellate review by the Board, as was being proposed, would result in the possibility of a greater period of patent term adjustment under the ''B'' provision vis-à-vis the Office's interpretation of this provision in 2000, but would result in the possibility of a lesser period of patent term adjustment under the ''C'' provision vis-à-vis the Office's interpretation of this provision in 2000. *See id.* Accordingly, for purposes of calculating patent term adjustment based upon appellate review, the impact of the rule change would be to reduce the amount of patent term adjustment awarded for a successful appeal under 35 U.S.C. 154(b)(1)(C)(iii) by beginning the appellate review period at the time the Board assumes jurisdiction of the appeal. Any negative impact to applicant, however, may be offset by potentially increasing the amount of patent term adjustment awarded for the Office failing to issue the patent within three years of the actual filing date in the United States under 35 U.S.C. 154(b)(1)(B) (''B' delay''). For example, the patent term adjustment awarded pursuant to the ''B'' delay may increase when the examiner reopens prosecution after a notice of appeal is filed (e.g., following a pre-appeal conference or an appeal conference) and the patent issues thereafter, because the period of time between the filing of the notice of appeal and the examiner's reopening of prosecution would no longer be deducted under 35 U.S.C. 154(b)(1)(B)(ii).

The December 2011 notice of proposed rulemaking also indicated that the AIPA sets forth a number of conditions and limitations on any patent term adjustment accrued under 35 U.S.C. 154(b)(1). *See Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review,* 76 FR at 81434–35. Specifically, 35 U.S.C. 154(b)(2)(C) provides, in part, that ''[t]he period of adjustment of the term of a patent under [35 U.S.C. 154(b)(1)] shall be reduced by a period equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution of the application'' and that ''[t]he Director shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.'' 35 U.S.C. 154(b)(2)(C)(i) and (iii). The rules of practice (37 CFR 41.37) require that an appeal brief be filed within two months from the date of filing of the notice of appeal under 35 U.S.C. 134 and 37 CFR 41.31, with extensions available pursuant to 37 CFR 1.136 and 1.550(c). An applicant, however, may delay or prevent the passing of jurisdiction of the application to the Board by: (1) Obtaining an extension of time to file the appeal brief, (2) filing an appeal brief that does not comply with the requirements of 37 CFR 41.37, or (3) seeking further prosecution before the examiner by filing a request for continued examination under 37 CFR 1.114. Therefore, the Office is providing, under its authority in this final rule under 35 U.S.C. 154(b)(2)(C), that the failure to file an appeal brief in compliance with 37 CFR 41.37 within three months from the date on which a notice of appeal to the Board was filed under 35 U.S.C. 134 and 37 CFR 41.31 constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.703: Section 1.703(b)(4), which defines the period of appellate review in 35 U.S.C. 154(b)(1)(B)(ii), is amended to define this period as the sum of the number of days, if any, in the period beginning on the date on which jurisdiction over the application passes to the Board under § 41.35(a) of this title and ending on the date that jurisdiction ends under § 41.35(b) of this title or the date of the last decision by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, whichever is later. Section 1.703(b)(4) formerly defined this period as beginning on the date on which a notice of appeal to the Board was filed under 35 U.S.C. 134 and § 41.31.

Section 1.703(e), which defines the period of appellate review in 35 U.S.C. 154(b)(1)(C)(iii), is amended to define this period as the sum of the number of days, if any, in the period beginning on the date on which jurisdiction over the application passes to the Board under § 41.35(a) of this title and ending on the date of a final decision in favor of the applicant by the Board or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145. Section 1.703(e) formerly defined this period as beginning on the date on which a notice of appeal to the Board was filed under 35 U.S.C. 134 and § 41.31.

Section 1.704: Section 1.704(c) is amended to provide that the failure to file an appeal brief in compliance with § 41.37 within three months from the date on which a notice of appeal to the Board was filed under 35 U.S.C. 134 and § 41.31 constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Section 1.704(c) would also provide that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months from the day on which a notice of appeal to the Board was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on

the date an appeal brief was filed in compliance with § 41.37 or a request for continued examination was filed in compliance with § 1.114. Section 1.704(c) also renumbers current § 1.704(c)(11) as new § 1.704(c)(12).

As discussed previously, the changes to § 1.703 in this final rule are applicable to any application in which a notice of allowance is issued on or after September 17, 2012, and any patent issuing thereon, and the change to § 1.704 is applicable with respect to the filing of an appeal brief in any application in which a notice of appeal under § 41.31 is filed on or after September 17, 2012.

The Office will also apply the changes to § 1.703 in this final rule in any timely patent term adjustment reconsideration proceeding that is initiated on or after September 17, 2012. To allow patentees to take advantage of this final rule, and for purposes limited to this final rule, such patent term adjustment reconsideration proceedings shall be the following timely filed proceedings initiated on or after September 17, 2012: (1) Reconsideration proceedings initiated pursuant to a remand from a timely filed civil action in Federal court; (2) reconsideration proceedings initiated pursuant to a timely request for reconsideration of the patent term adjustment indicated in the patent under § 1.705(d) in which the patentee argues that the change to § 1.703 in this final rule is applicable to his or her patent; and (3) reconsideration proceedings initiated pursuant to a request for reconsideration that seeks reconsideration of the Office's decision under § 1.705(d) regarding patent term adjustment under the Office's former interpretation of the appellate review language of 35 U.S.C. 154(b)(1)(B)(ii) and (C)(iii), if such request is filed within two months of the date of the decision for which reconsideration is requested (§ 1.181(f)). Section 1.705(d) provides, in part, that any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of §§ 1.705(b)(1) and (b)(2).

Comments and Response to Comments

As discussed previously, the Office published a notice on December 28, 2011, proposing to change the rules of practice pertaining to patent term adjustment to: (1) Indicate that the period of appellate review under the patent term provisions of the AIPA begins when jurisdiction over the application passes to the Board rather than when the notice of appeal is filed; (2) Indicate that the provisions relating to the ''B'' delay under 35 U.S.C 154(b)(1)(B) will reduce the amount of ''B'' delay for the period beginning from the date of the notice of appeal until the earlier of the filing of a reply brief or the expiration of the period to file the reply brief; and (3) introduce a new type of applicant delay for the applicant's failure to file a compliant appeal brief within two months of the filing of a notice of appeal. *See Revision of Patent Term Adjustment Provisions Relating to Appellee Review,* 76 FR 81432–37. The Office received comments from four commenters.

Comment 1: One comment suggested that the Office not consider it a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application under proposed § 1.704(c)(9) (§ 1.704(c)(11) as adopted) unless more than three months has passed from the filing of the notice of appeal until a compliant appeal brief is filed. The comment urges that preparing an appeal brief requires considerable effort and the standard should be the same as for responses to an Office action.

Response: As suggested in the comment, the Office is revising the provision to provide that it will be considered a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application under § 1.704(c)(11) if the applicant takes more than three months from the date of the filing of the notice of appeal to file a compliant appeal brief. The Office finds that the three-month period would be equivalent to the statutory time provided an applicant to respond to a notice from the Office making any rejection, objection, argument, or other request before applicant is deemed to have failed to engage in reasonable efforts to conclude processing or examination of the application under 35 U.S.C. 154(b)(2)(C)(ii).

Comment 2: Two comments suggested that the Office should not retroactively apply the provisions of proposed § 1.704(c)(9) (§ 1.704(c)(11) as adopted) to any notice of appeal that is filed prior to the final enactment of the provision.

Response: As suggested in the comments, the Office will apply the provision of 1.704(c)(11) only with respect to an appeal brief in which the notice of appeal was filed on or after September 17, 2012.

Comment 3: One comment requested clarification of the patent term adjustment effect under proposed § 1.704(c)(9) (§ 1.704(c)(11) as adopted) if the examiner reopens prosecution before a compliant appeal brief is filed, but more than two months after a notice of appeal was filed.

Response: The Office proposed that if more than two months passed from the date a notice of appeal is filed until the date a compliant appeal brief is filed, the Office would assess an applicant delay. The Office has decided not to assess applicant delay under 1.704(c)(11) unless three months has passed from the date a notice of appeal is filed until the date a compliant brief is filed. If the Office reopens prosecution after three months from the applicant's filing of the notice of appeal but prior to applicant's submission of a compliant appeal brief under § 41.37, the Office would not find any applicant delay under § 1.704(c)(11). Moreover, the Office would not deem the reopening of the prosecution as vacating any previous filed response that potentially increases patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i) through (iv). Reopening prosecution after the notice of appeal may increase pendency of the application and under certain circumstances result in patent term adjustment under 35 U.S.C. 154(b)(1)(B).

Comment 4: One comment requested clarification of whether the two-month period under proposed § 1.704(c)(9) (three-month period of § 1.704(c)(11) as adopted) would be extendable for weekends and holidays under *ArQule* v. *Kappos,* 793 F.Supp.2d 214 (D.D.C. 2011).

Response: Deadlines for patent term adjustment will be calculated pursuant to 35 U.S.C. 21(b) since the Office is establishing a time frame for taking action. If the last day of the three-month period set forth in 1.704(c)(11) as adopted falls on a Saturday, Sunday, or a Federal holiday within the District of Columbia, an applicant would be able to file the appeal brief on the next succeeding secular or business day without reduction of patent term adjustment under § 1.704(c)(11). For example, if a notice of appeal were filed on Friday, May 18, 2012, such that the three-month deadline fell on Saturday, August 18, 2012, and the appeal brief were filed on Monday, August 20, 2012, applicant would not receive any reduction of patent term adjustment under § 1.704(c)(11) because the three-month date fell on a Saturday. If applicant filed the compliant appeal brief on Tuesday, August 21, 2012, applicant would be assessed a one-day patent term adjustment reduction under § 1.704(c)(11).

Comment 5: One comment requested clarification of whether a response to a non-compliant appeal brief will be

considered a supplemental response under § 1.704(c)(8).

Response: The filing of a compliant appeal brief under 41.37 after a non-compliant appeal brief has been filed is not considered a supplemental reply under § 1.704(c)(8). Moreover, the Office will not consider it to be an omission under § 1.704(c)(7). However, it will be considered a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application under § 1.704(c)(11) if the compliant appeal brief is not filed within three months of the date of the notice of appeal, regardless of the filing of a non-compliant appeal brief.

Comment 6: Two comments requested clarification as to the patent term adjustment consequences of filing an information disclosure statement or an amendment after the notice of appeal has been filed.

Response: There will be a reduction of patent term adjustment if the applicant submits an information disclosure statement pursuant to § 1.97(c) or an amendment under § 41.33 after a notice of appeal has been filed but prior to jurisdiction passing to the Board under § 1.704(c)(8). Under § 1.97(c), an applicant who submits an information disclosure statement meeting the requirements of §§ 1.97 and 1.98 will have such submission considered by the examiner if it is accompanied by a statement under § 1.97(e) and the fee under § 1.17(p). Moreover, the Office may consider an amendment under § 41.33(a) and (b) if it meets the requirements for consideration. As § 1.703(b)(4) would no longer treat the period of time between the notice of appeal and the date that jurisdiction passes to the Board as being excluded from the ''B'' period, an applicant may increase ''B'' delay by taking actions that extend the period between the notice of appeal and the date that jurisdiction passes to the Board. Accordingly, treating the IDS and amendments filed after a notice of appeal as an applicant delay under (c)(8) will discourage attempts to increase ''B'' delay, and accordingly, the Office will so treat them.

Comment 7: One comment suggested that an applicant should be entitled to patent term adjustment if the Office does not respond to a request for a pre-appeal review within 45 days.

Response: The suggestion was not adopted. 35 U.S.C. 154(b)(1)(A) provides conditions under which an applicant is entitled to patent term adjustment due to delayed responses by the Office, but does not provide patent term adjustment for the situation suggested in the comment. 35 U.S.C. 154(b)(1)(A)(ii) requires that the Office respond to an appeal within four months after the date on which the appeal was taken. The Office implemented this patent term adjustment provision in September 2000, and indicated that the phrase ''appeal taken'' means the date of the filing of an appeal brief in compliance with § 41.37. *See Changes to Implement Patent Term Adjustment Under the Twenty-Year Patent Term,* 65 FR 56366, 56368 (Sept. 18, 2000).

Comment 8: One comment suggested that the applicant should be entitled to patent term adjustment if the Office does not mail either an examiner's answer or a notice of non-compliant appeal brief within two months of the filing of the appeal brief.

Response: The suggestion was not adopted. 35 U.S.C. 154(b)(1)(A) provides conditions upon which an application is entitled additional patent term adjustment due to delayed responses by the Office, and does not provide patent term adjustment on this basis. As discussed previously, 35 U.S.C. 154(b)(1)(A)(ii) requires that the Office respond to an appeal within four months after the date on which the appeal was taken. Accordingly, the Office could not provide patent term adjustment on the basis suggested in the comment.

Comment 9: One comment requested clarification as to whether the applicant is entitled to patent term adjustment if a supplemental examiner's answer or acknowledgment of the reply brief by the examiner is delayed.

Response: The Office recently revised the appeal rules to reduce the period of time before the application is transferred to the Board. *See Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals,* 76 FR 72270, 72271 (Nov. 22, 2011). Under the revised rules, the examiner will no longer acknowledge the reply brief or mail a supplemental examiner's answer in response to the reply brief. As a result, the Board takes jurisdiction over the proceeding upon the earlier of the filing of the reply brief under § 41.41 or the expiration of the period of time in which applicant may file a reply brief. *See* § 41.35(a). Accordingly, the issue is moot in light of the changes to the appeal rules.

Comment 10: One comment sought clarification as to the date that the file is transferred to the Board under § 41.35 in order to calculate patent term adjustment under 35 U.S.C. 154(b)(1)(C)(iii).

Response: The Office recently revised the *ex parte* appeal rules, which no longer define the date that the Board assumes jurisdiction of the appeal as the date that the file is transferred to the Board. *See Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals,* 76 FR at 72271. Jurisdiction now passes to the Board upon the earlier of the date of filing of the reply brief under § 41.41 or when the period for filing of the reply brief has expired. *See* § 41.35(a). The change to the *ex parte* appeal rules provides clarity as to when jurisdiction is passed and when the application is deemed to be under appellate review by the Board for purposes of 35 U.S.C. 154(b)(1)(C)(iii).

Comment 11: One comment sought clarification as to whether the applicant is entitled to patent term adjustment if an examiner reopens prosecution of the application.

Response: The applicant is not entitled to patent term adjustment for the reopening of prosecution of the application *per se.* However, under certain circumstances, the reopening of prosecution by the examiner may lead to additional patent term adjustment under 35 U.S.C. 154(b)(1)(B) because the period of time from the filing of the notice of appeal to the reopening of prosecution will not be excluded from the three-year provision of 35 U.S.C. 154(b)(1)(B)(ii) as such time would occur prior to the date that jurisdiction is passed to the Board. *See* § 1.703(b)(4).

Comment 12: One comment sought clarification as to what would happen if jurisdiction ends without a decision by the Board or a Federal court; *e.g.,* appellant files a request for continued examination under 37 CFR 1.114 after jurisdiction passes to the Board.

Response: Section 1.703(b)(4) has been amended to address situations where the jurisdiction ends without a decision by the Board or a Federal court. Under the revised rule, the appeal review period will end on the date that jurisdiction ends under § 41.35(b) or the date of the last decision by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, whichever is later. Accordingly, if appellant files a request for continued examination under 37 CFR 1.114 after jurisdiction passes to the Board, the period of ''B'' delay under 35 U.S.C. 154(b)(1)(B) would not include the period beginning on the date jurisdiction passed to the Board under § 41.35(a) and ending on the filing date of the request for continued examination under 37 CFR 1.114; that is, the date jurisdiction of the Board ends.

Comment 13: One comment sought clarification as to the point at which jurisdiction is remanded by the Board back to the examiner when the examiner

is affirmed, affirmed-in-part, or reversed.

Response: Pursuant to §§ 41.35(b)(2) and 41.54, jurisdiction of the Board ends when the Board enters a final decision (see § 41.2) and judicial review is sought or the time for seeking judicial review has expired. Under 37 CFR 41.54, jurisdiction passes to the examiner, for further action by appellant or examiner, as the condition of the application or patent under *ex parte* reexamination may require additional action pursuant to the decision. Accordingly, the amount of patent term adjustment that may accrue under § 1.703(e) and the period of time not considered ''B'' time will be fixed to the date that jurisdiction of the Board ends under § 41.35(b) unless an appeal under 35 U.S.C. 141 or a civil action under 35. U.S.C. 145 is filed.

Comment 14: One comment sought clarification as to the point at which an applicant may file an information disclosure statement after the Board reverses or remands the application to the examiner without an applicant delay resulting.

Response: Current § 1.704(c)(9) identifies when applicant delay occurs after a decision by the Board and is applicable to an information disclosure statement that is filed after a Board or Federal court decision. However, an applicant will not be deemed to have failed to engage in reasonable efforts under § 1.704(c)(9) if the applicant can file an accompanying statement under § 1.704(d).

Comment 15: One comment suggested that the Office should adopt its original proposal as set forth in the notice of proposed rulemaking, *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Rule and Information Disclosure Statements,* 76 FR 18990 (April 6, 2011), that an applicant should receive additional patent term adjustment if the Office reopens prosecution and issues an Office action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 after a notice of appeal has been filed but before any decision by the Board. This comment suggested that the proposal set forth in the April 2011 notice of proposed rulemaking is fairer in that only meritorious appeals will be rewarded, and that under the latest proposal, meritorious appeals will not be rewarded if prosecution is reopened after the filing of a request for continued examination. The comment further suggested that applicant can increase the patent term adjustment of the ''B'' delay by distorting the time between the notice of appeal and the date that jurisdiction passes to the Board by filing extensions of time under § 1.136(a). In addition, the comment suggested that the Board conducts ''appellate review prior to the jurisdiction change under § 41.35.''

Response: The suggestions were not adopted. The Office has acknowledged that the impact of the rule would reduce the amount of patent term adjustment awarded for a successful appeal under 35 U.S.C. 154(b)(1)(C)(iii). The Office, however, believes that any such impact may be offset by potentially increased patent term adjustment awarded for the Office failing to issue the patent within three years of the actual filing date under 35 U.S.C. 154(b)(1)(B). *See Revision of Patent Term Adjustment Provisions relating to Appellate Review,* 76 FR 81432 (Dec. 28, 2011). The Office is aware that under certain scenarios an applicant may have received more overall patent term adjustment under one approach than the other. However, to change the interpretation of the appellate review language of the ''B'' provision without also changing the appellate review language of the ''C'' provision would require the Office to interpret the same statutory term, ''appellate review by the Board,'' appearing in two closely related provisions, in two different ways. The Office is aware that prior to the passage of jurisdiction from the examiner to the Board, the Board reviews briefs for compliance with § 41.37, but the Office notes that Revised Procedures for Appellate Review memorandum expressly states that the responsibility of the Board for determining whether appeal briefs comply with § 41.37 is not considered a transfer of jurisdiction when an appeal brief is filed. See *Revised Procedures for Appellate Brief Review (March 29, 2010) http://www.uspto.gov/patents/law/exam/bpai_revised_procedure_20100329.pdf.* Instead, this review is only a transfer of the specific responsibility of notifying appellants under § 41.37(d) of the reasons for non-compliance. *id.* As for an applicant's ability to distort the time from the notice of appeal to the date jurisdiction passes under § 41.35, the Office has prevented applicant from increasing the ''B'' period by adding an additional applicant delay if applicant takes more than three months from the notice of appeal to the date of the submission of a compliant appeal brief under § 1.704(c)(11). An applicant, for example, who obtains a five-month extension of time to file the appeal brief would have an applicant delay beginning on the day after the three-month date of the filing of the notice of appeal and ending on the date of the filing of the compliant appeal brief.

Rulemaking Considerations

A. Regulatory Flexibility Act

The Deputy General Counsel for General Law of the United States Patent and Trademark Office certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that changes in the proposed rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). The Office received no comments on that certification. For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this final rule will not have significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

The changes to the rules of practice in this final rule: (1) Revise the provisions that define the beginning and ending dates of the period of appellate review under 35 U.S.C. 154(b)(1)(B)(ii) and 154(b)(1)(C)(iii) to provide that this period begins on the date on which jurisdiction over the application passes to the Board under 37 CFR 41.35; and (2) provide that the failure to file a proper appeal brief within three months from the date on which a notice of appeal to the Board was filed, as required by 35 U.S.C. 134, constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. This final rule does not add any additional requirements (including information collection requirements) or fees for patent applicants or patentees.

The changes to 37 CFR 1.703(b)(4) and (e) merely reinterpret the beginning and ending dates of the period of appellate review under 35 U.S.C. 154(b)(1)(B)(ii) and 154(b)(1)(C)(iii) for purposes of patent term adjustment calculations. They do not impose any additional burden on applicants. The change to 37 CFR 1.704(c) specifies that the failure to file a proper appeal brief within three months from the date on which a notice of appeal to the Board was filed, as required by 35 U.S.C. 134, constitutes failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application for purposes of patent term adjustment calculations. This revision will not have a significant economic impact on a substantial number of small entities because: (1) Applicants are not entitled to patent term adjustment for

examination delays that result from their delay in prosecuting the application (35 U.S.C. 154(b)(2)(C)(i) and 37 CFR 1.704(a)); and (2) applicants may avoid any consequences from this provision simply by filing an appeal brief in compliance with 37 CFR 41.37 (or filing a request for continued examination under 37 CFR 1.114) within three months from the date on which a notice of appeal to Board was filed.

For the foregoing reasons, neither of the changes in this notice will have a significant economic impact on a substantial number of small entities.

B. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

C. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

D. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

E. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

F. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

G. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

H. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

I. Executive Order 12630 (Taking of Private Property)

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

J. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

K. Unfunded Mandates Reform Act of 1995

The changes in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

L. National Environmental Policy Act

This rulemaking will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

M. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

N. Paperwork Reduction Act

The rules of practice pertaining to patent term adjustment and extension have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 0651–0020. The changes to the rules of practice in this final rule: (1) Revise the provisions that define the beginning and ending dates of the period of appellate review under 35 U.S.C. 154(b)(1)(B)(ii) and 154(b)(1)(C)(iii) to provide that this period begins on the date on which jurisdiction over the application passes to the Board under 37 CFR 41.35; and

(2) provide that the failure to file a proper appeal brief within three months from the date on which a notice of appeal to the Board was filed, as required by 35 U.S.C. 134, constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. This final rule does not propose to add any additional requirements (including information collection requirements) or fees for patent applicants or patentees. Therefore, the Office is not resubmitting the pertinent information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collections approved

under OMB control number 0651–0020 or any other information collections.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.703 is amended by revising paragraph (b)(4) and (e) to read as follows:

§ 1.703 Period of adjustment of patent term due to examination delay.

* * * * *

(b) * * *

(4) The number of days, if any, in the period beginning on the date on which jurisdiction over the application passes to the Patent Trial and Appeal Board under § 41.35(a) of this chapter and ending on the date that jurisdiction by the Patent Trial and Appeal Board ends under § 41.35(b) of this chapter or the date of the last decision by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, whichever is later.

* * * * *

(e) The period of adjustment under § 1.702(e) is the sum of the number of days, if any, in the period beginning on the date on which jurisdiction over the application passes to the Patent Trial and Appeal Board under § 41.35(a) of this chapter and ending on the date of a final decision in favor of the applicant by the Patent Trial and Appeal Board or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

* * * * *

■ 3. Section 1.704 is amended by revising paragraphs (c)(10)(ii) and (c)(11) and adding paragraph (c)(12) to read as follows:

§ 1.704 Reduction of period of adjustment of patent term.

* * * * *

(c) * * *

(10) * * *

(ii) Four months;

(11) Failure to file an appeal brief in compliance with § 41.37 of this chapter within three months from the date on which a notice of appeal to the Patent Trial and Appeal Board was filed under 35 U.S.C. 134 and § 41.31 of this chapter, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date three months from the date on which a notice of appeal to the Patent Trial and Appeal Board was filed under 35 U.S.C. 134 and § 41.31 of this chapter, and ending on the date an appeal brief in compliance with § 41.37 of this chapter or a request for continued examination in compliance with § 1.114 was filed; and

(12) Further prosecution via a continuing application, in which case the period of adjustment set forth in § 1.703 shall not include any period that is prior to the actual filing date of the application that resulted in the patent.

* * * * *

Dated: August 13, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–20238 Filed 8–15–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that

have federalism implications under Executive Order 13132.

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in feet (LTD) Modified	Communities affected
Maui County, Hawaii Docket No.: FEMA–B–1158			
Pacific Ocean (entire shoreline of the Island of Lanai).	Approximately 1.5 miles northwest of the intersection of Kaumalapau Highway and Lanai Rock Quarry Road.	^3	Maui County.
	Approximately 1.1 miles southwest of the intersection of Hulopoe Drive and Mauna Lei Drive.	^55	
Pacific Ocean—Island of Maui	Southeast corner of the Island of Maui, approximately 670 feet southwest of the intersection of Honoapiilani Highway and Keawe Street.	^4	Maui County.
	Northwest corner of the Island of Maui, approximately 1.7 miles southwest of the intersection of Piilani Highway and Kaupo Gap Road.	^79	
Shallow Flooding (Island of Maui).	Approximately 0.9 mile northwest of Apole Point	#2	Maui County.
Shallow Flooding (Island of Maui).	Approximately 0.7 mile northwest of Apole Point	#2	Maui County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Elevation in feet (LTD).

ADDRESSES

Maui County

Maps are available for inspection at the Maui County Planning Department, 250 South High Street, 2nd Floor, Wailuku, HI 96793.

Cumberland County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1043			
Bear Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.9 mile upstream of the Cumberland River confluence.	+551	Unincorporated Areas of Cumberland County.
Big Renox Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.8 mile upstream of the Cumberland River confluence.	+556	Unincorporated Areas of Cumberland County.
Big Whetstone Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.5 mile upstream of the Cumberland River confluence.	+562	Unincorporated Areas of Cumberland County.
Big Willis Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 1.5 miles upstream of the Cumberland River confluence.	+563	Unincorporated Areas of Cumberland County.
Brush Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.6 mile upstream of the Cumberland River confluence.	+558	Unincorporated Areas of Cumberland County.
Carter Branch West (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.6 mile upstream of the Cumberland River confluence.	+540	Unincorporated Areas of Cumberland County.
Casey Branch (backwater effects from Dale Hollow Lake).	From the Dale Hollow Lake confluence to approximately 0.5 mile upstream of the Dale Hollow Lake confluence.	+663	Unincorporated Areas of Cumberland County.
Cedar Creek North (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.7 mile upstream of the Cumberland River confluence.	+552	Unincorporated Areas of Cumberland County.
Clover Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.4 mile upstream of the Cumberland River confluence.	+550	Unincorporated Areas of Cumberland County.
Cumberland River	Approximately 3,300 feet downstream of the Judio Creek confluence.	+533	City of Burkesville, Unincorporated Areas of Cumberland County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in feet (LTD) Modified	Communities affected
	Approximately 1,500 feet upstream of the Crow Creek confluence.	+568	
Cumberland River Tributary 32 (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.6 mile upstream of the Cumberland River confluence.	+555	Unincorporated Areas of Cumberland County.
Cumberland River Tributary 55 (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 1,900 feet upstream of the Cumberland River confluence.	+541	Unincorporated Areas of Cumberland County.
Cumberland River Tributary 57 (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.6 mile upstream of the Cumberland River confluence.	+540	Unincorporated Areas of Cumberland County.
Dale Hollow Lake (Obey River)	Entire shoreline within community	+663	Unincorporated Areas of Cumberland County.
Fanny's Creek (backwater effects from Dale Hollow Lake).	From the Dale Hollow Lake confluence to approximately 1,400 feet upstream of the Dale Hollow Lake confluence.	+633	Unincorporated Areas of Cumberland County.
Galloway Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.5 mile upstream of the Cumberland River confluence.	+544	Unincorporated Areas of Cumberland County.
Galloway Creek Tributary 3 (backwater effects from Cumberland River).	From the Galloway Creek confluence to approximately 1,400 feet upstream of the Galloway Creek confluence.	+544	Unincorporated Areas of Cumberland County.
Goose Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.9 mile upstream of the Cumberland River confluence.	+555	Unincorporated Areas of Cumberland County.
Haggard Branch (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.9 mile upstream of the Cumberland River confluence.	+547	Unincorporated Areas of Cumberland County.
Hendricks Creek (backwater effects from Dale Hollow Lake).	From the Dale Hollow Lake confluence to approximately 600 feet upstream of the Dale Hollow Lake confluence.	+663	Unincorporated Areas of Cumberland County.
Hoot Branch (backwater effects from Dale Hollow Lake).	From the Dale Hollow Lake confluence to approximately 950 feet upstream of the Dale Hollow Lake confluence.	+663	Unincorporated Areas of Cumberland County.
Hoot Branch Tributary 1 (backwater effects from Dale Hollow Lake).	From the Hoot Branch confluence to approximately 1,000 feet upstream of the Hoot Branch confluence.	+663	Unincorporated Areas of Cumberland County.
Judio Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.7 mile upstream of the Cumberland River confluence.	+533	Unincorporated Areas of Cumberland County.
Lewis Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 1.6 miles upstream of the Cumberland River confluence.	+554	Unincorporated Areas of Cumberland County.
Lewis Creek Tributary 5 (backwater effects from Cumberland River).	From the Lewis Creek confluence to approximately 1,200 feet upstream of the Lewis Creek confluence.	+554	City of Burkesville, Unincorporated Areas of Cumberland County.
Little Whetstone Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.5 mile upstream of the Cumberland River confluence.	+562	Unincorporated Areas of Cumberland County.
Little Willis Creek (backwater effects from Cumberland River).	From the Big Willis Creek confluence to approximately 0.7 mile upstream of the Big Willis Creek confluence.	+563	Unincorporated Areas of Cumberland County.
Little Willis Creek Tributary 1 (backwater effects from Cumberland River).	From the Little Willis Creek confluence to approximately 800 feet upstream of the Little Willis Creek confluence.	+563	Unincorporated Areas of Cumberland County.
Marrowbone Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 1,200 feet upstream of the Cumberland River confluence.	+547	Unincorporated Areas of Cumberland County.
Mud Camp Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 1.1 miles upstream of the Cumberland River confluence.	+539	Unincorporated Areas of Cumberland County.
Otter Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.5 mile upstream of the Cumberland River confluence.	+551	Unincorporated Areas of Cumberland County.
Perry Cary Hollow (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 1,600 feet upstream of the Cumberland River confluence.	+534	Unincorporated Areas of Cumberland County.
Potters Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.7 mile upstream of the Cumberland River confluence.	+545	Unincorporated Areas of Cumberland County.
Raft Creek (backwater effects from Cumberland River).	From the Cumberland River confluence to approximately 0.4 mile upstream of the Cumberland River confluence.	+551	Unincorporated Areas of Cumberland County.
Riddle Prong (backwater effects from Dale Hollow Lake).	From the Dale Hollow Lake confluence to approximately 0.6 mile upstream of the Dale Hollow Lake confluence.	+663	Unincorporated Areas of Cumberland County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (LTD) Modified	Communities affected
Sulphur Creek (backwater effects from Dale Hollow Lake).	From the Dale Hollow Lake confluence to approximately 0.6 mile upstream of the Dale Hollow Lake confluence.	+663	Unincorporated Areas of Cumberland County.
Williams Creek (backwater effects from Dale Hollow Lake).	From the Dale Hollow Lake confluence to approximately 0.5 mile upstream of the Dale Hollow Lake confluence.	+633	Unincorporated Areas of Cumberland County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Burkesville

Maps are available for inspection at City Hall, 214 Upper River Street, Burkesville, KY 42717.

Unincorporated Areas of Cumberland County

Maps are available for inspection at the Cumberland County Courthouse, 600 Courthouse Square, Burkesville, KY 42717.

Grayson County, Kentucky, and Incorporated Areas
Docket Nos.: FEMA–B–1098 and FEMA–B–1210

Ashcraft Branch (backwater effects from Rough River Lake).	From the confluence with Rough River Lake to approximately 1,525 feet upstream of the confluence with Rough River Lake.	+524	Unincorporated Areas of Grayson County.
Big Run Branch (backwater effects from Rough River Lake).	From the confluence with Rough River Lake to approximately 1,805 feet downstream of the confluence with Big Run Branch Tributary 7.	+524	Unincorporated Areas of Grayson County.
Browns Creek (backwater effects from Rough River).	From the confluence with the Rough River to approximately 0.4 mile downstream of Olaton Road.	+427	Unincorporated Areas of Grayson County.
Buck Creek (backwater effects from Caney Creek).	From the confluence with Caney Creek to approximately 675 feet upstream of the confluence with Buck Creek.	+467	Unincorporated Areas of Grayson County.
Caney Fork	At the confluence with North Fork	+427	City of Caneyville, Unincorporated Areas of Grayson County.
	Approximately 875 feet downstream of North Main Street	+471	
Cave Creek (backwater effects from Rough River Lake).	From the confluence with Rough River Lake to approximately 0.6 mile upstream of the confluence with Cave Creek.	+524	Unincorporated Areas of Grayson County.
Conoloway Creek (backwater effects from Nolin Lake).	From the confluence with Nolin Lake to approximately 1,510 feet upstream of Huffman Road.	+560	Unincorporated Areas of Grayson County.
Diamond Branch (backwater effects from Rough River).	From the confluence with the Rough River to approximately 0.8 mile upstream of the confluence with the Rough River.	+439	Unincorporated Areas of Grayson County.
Grindstone Fork (backwater effects from Nolin Lake).	From the confluence with Nolin Lake to approximately 1.6 miles upstream of the confluence with Nolin Lake.	+560	Unincorporated Areas of Grayson County.
Hunting Fork (backwater effects from Nolin Lake).	From the confluence with Nolin Lake to approximately 0.5 mile upstream of Iberia Road.	+560	Unincorporated Areas of Grayson County.
Jarrett Fork (backwater effects from Caney Creek).	From the confluence with Caney Creek to approximately 895 feet downstream of Walnut Grove Road.	+467	Unincorporated Areas of Grayson County.
Laurel Branch (backwater effects from Rough River Lake).	From the confluence with the Rough River Lake to approximately 370 feet upstream of Clifty Church Drive.	+524	Unincorporated Areas of Grayson County.
Little Clifty Creek (backwater effects from Rough River Lake).	From the confluence with the Rough River Lake to approximately 1,220 feet upstream of the confluence with Little Clifty Creek Tributary 12.	+524	Unincorporated Areas of Grayson County.
Little Short Creek (backwater effects from Rough River).	From the confluence with the Rough River to approximately 200 feet upstream of Lone Hill Road.	+438	Unincorporated Areas of Grayson County.
Long Spring Branch (backwater effects from Rough River).	From the confluence with the Rough River to approximately 0.6 mile upstream of the confluence with the Rough River.	+430	Unincorporated Areas of Grayson County.
Mistaken Creek (backwater effects from Rough River).	From the confluence with the Rough River to approximately 5.0 miles upstream of Olaton Road.	+433	Unincorporated Areas of Grayson County.
Nolin Lake	Entire shoreline	+560	Unincorporated Areas of Grayson County.
Nolin River (backwater effects from Nolin Lake).	From the confluence with Nolin Lake to approximately 0.7 mile upstream of the confluence with Nolin Lake.	+560	Unincorporated Areas of Grayson County.
North Fork	Approximately 1,000 feet upstream of the confluence with South Fork.	+472	City of Caneyville, Unincorporated Areas of Grayson County.
	Approximately at the confluence with Caney Creek	+472	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (LTD) Modified	Communities affected
Person Branch (backwater effects from Nolin Lake).	From the confluence with Nolin Lake to approximately 1.2 miles upstream of the confluence with Nolin Lake.	+560	Unincorporated Areas of Grayson County.
Peter Cave Creek (backwater effects from Rough River Lake).	From the confluence with Rough River Lake to approximately 0.5 mile upstream of the confluence with Rough River Lake.	+524	Unincorporated Areas of Grayson County.
Pleasant Run (backwater effects from Rough River).	From the confluence with the Rough River to approximately 1.6 miles upstream of the confluence with the Rough River.	+445	Unincorporated Areas of Grayson County.
Rock Creek (backwater effects from Nolin Lake).	From the confluence with Nolin Lake to approximately 500 feet upstream of Horntown Road.	+560	Unincorporated Areas of Grayson County.
Rock Creek Tributary 14 (backwater effects from Nolin Lake).	From the confluence with Rock Creek to approximately 0.6 mile upstream of the confluence with Rock Creek.	+560	Unincorporated Areas of Grayson County.
Rock Creek Tributary 15 (backwater effects from Nolin Lake).	From the confluence with Nolin Lake to just downstream of Left Fork of Rock Creek Road.	+560	Unincorporated Areas of Grayson County.
Rough River	At the confluence with Browns Creek	+427	Unincorporated Areas of Grayson County.
	Just downstream of Green Farms Road	+446	
Rough River Lake	Entire shoreline	+524	Unincorporated Areas of Grayson County.
Short Creek (backwater effects from Spring Fork).	From the confluence with Spring Fork to approximately 0.7 mile upstream of the confluence with Spring Fork.	+438	Unincorporated Areas of Grayson County,
South Barton Run (backwater effects from Nolin Lake).	From the confluence with Nolin Lake to approximately 1.0 mile upstream of the confluence with Nolin Lake.	+560	Unincorporated Areas of Grayson County.
South Fork (backwater effects from North Fork).	From the confluence with North Fork to approximately 925 feet upstream of the confluence with North Fork.	+472	City of Caneyville, Unincorporated Areas of Grayson County.
Spring Fork (backwater effects from Rough River).	From the confluence with the Rough River to just upstream of Owensboro Road.	+438	Unincorporated Areas of Grayson County.
Stones Hollow (backwater effects from Rough River Lake).	From the confluence with Rough River Lake to approximately 0.4 mile upstream of the confluence with Rough River Lake.	+524	Unincorporated Areas of Grayson County.
Taylor Fork	At the upstream side of Bloomington Road	+554	Town of Leitchfield, Unincorporated Areas of Grayson County.
	Approximately 75 feet downstream of Wendell H. Ford-Western Kentucky Parkway.	+560	
Walter Creek (backwater effects from Rough River Lake).	From the confluence with the Rough River Lake to approximately 1,010 feet downstream of Duff Road.	+524	Unincorporated Areas of Grayson County.
West Cane Run (backwater effects from Caney Creek).	From the confluence with Caney Creek to approximately 1,900 feet upstream of the confluence with Caney Creek.	+466	Unincorporated Areas of Grayson County.
Wildcat Hollow (backwater effects from Rough River Lake).	From the confluence with Rough River Lake to approximately 1,680 feet upstream of the confluence with Rough River Lake.	+524	Unincorporated Areas of Grayson County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Caneyville
Maps are available for inspection at City Hall, 104 North Main Street, Caneyville, KY 42721.

Town of Leitchfield
Maps are available for inspection at 314 West White Oak Street, Leitchfield, KY 42755.

Unincorporated Areas of Grayson County
Maps are available for inspection at 10 Public Square, Leitchfield, KY 42754.

George County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–1214

Black Creek	Approximately 1.7 miles downstream of State Route 57	+39	Unincorporated Areas of George County.
	Approximately 1.2 miles upstream of State Route 57	+43	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (LTD) Modified	Communities affected
Chickasawhay River	At the Leaf River confluence	+59	Unincorporated Areas of George County.
	Approximately 3.8 miles upstream of the Leaf River confluence.	+61	
Depot Creek	Approximately 1.0 mile downstream of Beaver Dam Road	+141	City of Lucedale, Unincorporated Areas of George County.
	Approximately 1,140 feet upstream of Depot Road	+189	
Indian Creek	Approximately 0.5 mile downstream of Grain Elevator Road.	+38	Unincorporated Areas of George County.
	Approximately 0.6 mile upstream of Grain Elevator Road	+56	
Leaf River	At the Chickasawhay River confluence	+59	Unincorporated Areas of George County.
	Approximately 3.1 miles upstream of the Chickasawhay River confluence.	+60	
Pascagoula River	Approximately 1.2 miles upstream of the Plum Bluff Cutoff confluence.	+40	Unincorporated Areas of George County.
	Approximately 1,690 feet upstream of Merrill Salem Road	+59	
Red Creek	Approximately 1.8 miles downstream of Red Creek Road	+37	Unincorporated Areas of George County.
	Approximately 2.9 miles upstream of Red Creek Road	+46	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Lucedale
Maps are available for inspection at the City Clerk's Office, 5126 Main Street, Lucedale, MS 39452.

Unincorporated Areas of George County
Maps are available for inspection at the George County Courthouse, 355 Cox Street, Lucedale, MS 39452.

Osage County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1210

Baileys Creek (backwater effects from Missouri River).	From the Gasconade County boundary to approximately 2.07 miles upstream of the Gasconade County boundary.	+530	Unincorporated Areas of Osage County.
Bear Creek (backwater effects from Missouri River).	From the Maries River confluence to approximately 700 feet upstream of County Road 610.	+551	Unincorporated Areas of Osage County.
Cadet Creek (backwater effects from Missouri River).	From the Osage River confluence to approximately 350 feet upstream of County Road 412.	+551	Unincorporated Areas of Osage County.
Darrow Branch (backwater effects from Missouri River).	From the Loose Creek confluence to approximately 1,950 feet upstream of the Loose Creek confluence.	+544	Unincorporated Areas of Osage County.
Deer Creek (backwater effects from Missouri River).	From approximately 400 feet upstream of the Saint Aubert Creek confluence to approximately 1.99 miles upstream of State Route 100.	+540	Unincorporated Areas of Osage County.
Dooling Creek (backwater effects from Missouri River).	From approximately 1,000 feet upstream of Missouri Avenue to approximately 750 feet downstream of State Highway K.	+537	City of Chamois, Unincorporated Areas of Osage County.
Indian Creek (backwater effects from Missouri River).	From the Maries River confluence to approximately 1,550 feet upstream of County Road 610.	+551	Unincorporated Areas of Osage County.
Jaeger Creek (backwater effects from Missouri River).	From the Osage River confluence to approximately 0.56 mile upstream of the Osage River confluence.	+551	Unincorporated Areas of Osage County.
Loose Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,250 feet upstream of the Darrow Branch confluence.	+544	Unincorporated Areas of Osage County.
Luzon Branch (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,800 feet upstream of County Road 416.	+550	Unincorporated Areas of Osage County.
Maries River (backwater effects from Missouri River).	From the Osage River confluence to approximately 0.67 mile upstream of the Bear Creek confluence.	+551	Unincorporated Areas of Osage County.
Missouri River	At the Gasconade County boundary	+530	City of Chamois, Unincorporated Areas of Osage County.
	At the Cole County boundary	+551	
Osage River (backwater effects from Missouri River).	Approximately 9 miles upstream of U.S. Route 50	+542	Unincorporated Areas of Osage County.
	At the Missouri River confluence	+547	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (LTD) Modified	Communities affected
Owl Creek (backwater effects from Missouri River).	From approximately 0.78 mile downstream of County Road 435 to approximately 775 feet downstream of County Road 435.	+542	Unincorporated Areas of Osage County.
Saint Aubert Creek (backwater effects from Missouri River).	From approximately 1.18 miles upstream of the Deer Creek confluence to approximately 1,350 feet downstream of County Road 435.	+541	Unincorporated Areas of Osage County.
South Fork Cadet Creek (backwater effects from Missouri River).	From the Cadet Creek confluence to approximately 0.88 mile upstream of the Cadet Creek confluence.	+551	Unincorporated Areas of Osage County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Chamois

Maps are available for inspection at City Hall, 200 South Main Street, Chamois, MO 65024.

Unincorporated Areas of Osage County

Maps are available for inspection at the Osage County Courthouse, 205 East Main Street, Linn, MO 65051.

Lewis and Clark County, Montana, and Incorporated Areas
Docket Nos.: FEMA–B–1010 and FEMA–B–1204

Silver Creek	Approximately 200 feet downstream of I–15	+3695	Unincorporated Areas of Lewis And Clark County.
	At Applegate Drive	+3765	
Silver Creek Overflow (D2 Ditch).	Approximately 170 feet downstream of I–15 Frontage Road.	+3687	Unincorporated Areas of Lewis And Clark County.
	Approximately 0.38 mile upstream of North Montana Avenue.	+3712	
Silver Creek Overflow (Ryanns Lane).	Approximately 210 feet downstream of North Montana Avenue.	+3710	Unincorporated Areas of Lewis And Clark County.
	Approximately 75 feet upstream of North Montana Avenue	+3713	
Tenmile Creek	Approximately 3,000 feet upstream of East Sierra Road	+3708	City of Helena, Unincorporated Areas of Lewis And Clark County.
	Approximately 50 feet downstream of Blue Cloud Bridge	+4093	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Helena

Maps are available for inspection at 316 North Park Avenue, Helena, MT 59623.

Unincorporated Areas of Lewis And Clark County

Maps are available for inspection at 221 Breckenridge Street, Helena, MT 59623.

Morgan County, Ohio, and Incorporated Areas
Docket No.: FEMA–B–1210

Bald Eagle Run (backwater effects from Muskingum River).	Approximately 0.5 mile east of Riverview Road (at the northern Village of Stockport corporate limit).	+653	Village of Stockport.
	Approximately 1,000 feet east of Riverview Road (at the northern Village of Stockport corporate limit).	+653	
Bell Creek	At the Muskingum River confluence	+665	Unincorporated Areas of Morgan County, Village of McConnelsville.
	Approximately 0.8 mile upstream of North 7th Street	+740	
Muskingum River	Approximately 0.4 mile downstream of State Route 266	+651	Village of Stockport.
	Approximately 1,600 feet upstream of State Route 266	+653	
Turkey Run (backwater effects from Muskingum River).	Approximately 300 feet east of East River Road (At the southern Village of Stockport corporate limit).	+651	Village of Stockport.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (LTD) Modified	Communities affected

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Morgan County

Maps are available for inspection at the Reicker Building, 155 East Main Street, Room 208, McConnelsville, OH 43756.

Village of McConnelsville

Maps are available for inspection at 9 West Main Street, McConnelsville, OH 43756.

Village of Stockport

Maps are available for inspection at 1685 Broadway Street, Stockport, OH 43787.

Somerset County, Pennsylvania (All Jurisdictions)
Docket No.: FEMA–B–1130

Casselman River	Approximately 858 feet upstream of Robert Brown Road	+1333	Township of Addison.
	Approximately 1.25 miles upstream of Robert Brown Road	+1386	
Casselman River	Approximately 1.33 miles downstream of U.S. Route 219 (Mason Dixon Highway).	+1945	Township of Summit.
	Approximately 540 feet downstream of Cuba Street	+1952	
East Branch Coxes Creek	Approximately 473 feet upstream of the Pennsylvania Turnpike.	+2107	Township of Somerset.
	Approximately 593 feet upstream of the Pennsylvania Turnpike.	+2107	
Laurel Hill Creek	Approximately 0.43 mile upstream of the Park Street Bridge.	+1330	Township of Lower Turkeyfoot.
	Approximately 0.67 mile upstream of Park Street	+1332	
Paint Creek	Approximately 688 feet downstream of Main Street	+1623	Borough of Paint.
	Approximately 595 feet downstream of Main Street	+1629	
Stonycreek River	Approximately 330 feet downstream of the confluence with Quemahoning Creek.	+1543	Borough of Benson.
	Approximately 140 feet upstream of the confluence with Quemahoning Creek.	+1543	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Borough of Benson

Maps are available for inspection at the Benson Borough Building, 118 Main Street, Hollsopple, PA 15935.

Borough of Paint

Maps are available for inspection at the Paint Borough Building, 2044 Centennial Drive, Windber, PA 15963.

Township of Addison

Maps are available for inspection at the Addison Township Building, 343 High Point Road, Fort Hill, PA 15540.

Township of Lower Turkeyfoot

Maps are available for inspection at the Lower Turkeyfoot Township Building, 2584 Jersey Hollow Road, Confluence, PA 15424.

Township of Somerset

Maps are available for inspection at the Township Building, 2209 North Center Avenue, Somerset, PA 15501.

Township of Summit

Maps are available for inspection at the Summit Township Office, 192 Township Office Road, Meyersdale, PA 15552.

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

Dated: August 1, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–20146 Filed 8–15–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the

National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
Unincorporated Areas of Chickasaw County, Iowa Docket No.: FEMA–B–1208				
Iowa	Unincorporated Areas of Chickasaw County.	Little Cedar River (backwater effects from Cedar River).	Approximately 1,200 feet upstream of the Cedar River confluence.	+962
	.....	.....	Approximately 100 feet upstream of Beumont Way.	+962

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Chickasaw County

Maps are available for inspection at the Chickasaw County Courthouse, 8 East Prospect Street, New Hampton, IA 50659.

Flooding Source(s)	Location of Referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Pima County, Arizona, and Incorporated Areas Docket No.: FEMA–B–1220			
Agua Caliente Split Flow	Approximately 1,500 feet upstream of the Tanque Verde Creek confluence.	+2583	Unincorporated Areas of Pima County.
	Approximately 500 feet downstream of the Agua Caliente Wash divergence.	+2593	
Agua Caliente Spur Flow	Approximately 0.5 mile downstream of East Tanque Verde Road.	+2593	Unincorporated Areas of Pima County.
	Approximately 0.4 mile upstream of East Tanque Verde Road.	+2624	
Agua Caliente Wash	Approximately 130 feet downstream of North Bonanza Avenue.	+2567	City of Tucson, Unincorporated Areas of Pima County.
	Approximately 700 feet upstream of Horse Head Road	+2805	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Tucson

Maps are available for inspection at the Planning and Development Services Department, 201 North Stone Avenue, 3rd Floor, Tucson, AZ 85701.

Unincorporated Areas of Pima County

Maps are available for inspection at the Pima County Flood Control District, 97 East Congress Street, 3rd Floor, Tucson, AZ 85701.

Polk County, Florida, and Incorporated Areas Docket No.: FEMA–B–1184			
Lake B—ICPR Node Lake B	Entire shoreline	+67	Unincorporated Areas of Polk County.
Lake Marion Creek	Approximately 1 mile upstream of the Lake Hatchineha confluence.	+57	Unincorporated Areas of Polk County.
	At the Lake Marion Creek Outlet and Snell Creek confluence.	+67	
Lake Marion Creek Outlet	At the Lake Marion Creek and Snell Creek confluence	+67	Unincorporated Areas of Polk County.
	At the Lake Marion confluence	+68	
Lake Polk—ICPR Node Lake Polk.	Entire shoreline	+67	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A1.	Entire shoreline	+70	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A10.	Entire shoreline	+64	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A11.	Entire shoreline	+64	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A12.	Entire shoreline	+64	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A13.	Entire shoreline	+63	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A2.	Entire shoreline	+68	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A20.	Entire shoreline	+70	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A21.	Entire shoreline	+70	Unincorporated Areas of Polk County.

Flooding Source(s)	Location of Referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
London Creek Watershed Unnamed Pond—ICPR Node 28A22.	Entire shoreline	+70	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A3.	Entire shoreline	+67	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A5.	Entire shoreline	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A6.	Entire shoreline	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A7.	Entire shoreline	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A8.	Entire shoreline	+63	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28A9.	Entire shoreline	+64	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28B1.	Entire shoreline	+70	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28B11.	Entire shoreline	+66	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28B12.	Entire shoreline	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28B15.	Entire shoreline	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28B16.	Entire shoreline	+63	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28B5.	Entire shoreline	+70	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28B6.	Entire shoreline	+70	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28C11.	Entire shoreline	+64	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28C12.	Entire shoreline	+66	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28C20.	Entire shoreline	+66	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28C8.	Entire shoreline	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28C9.	Entire shoreline	+67	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28D1.	Entire shoreline	+67	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28D10.	Entire shoreline	+64	Unincorporated Areas of Polk County.

Flooding Source(s)	Location of Referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
London Creek Watershed Unnamed Pond—ICPR Node 28D11.	Entire shoreline	+67	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28D2.	Entire shoreline	+67	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28D3.	Entire shoreline	+66	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28D4.	Entire shoreline	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28D5.	Entire shoreline	+66	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28D6.	Entire shoreline	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28D7.	Entire shoreline	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28D8.	Entire shoreline	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Pond—ICPR Node 28D9.	Entire shoreline	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W1.	Entire wetland area	+68	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W10.	Entire wetland area	+68	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W12.	Entire wetland area	+67	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W13.	Entire wetland area	+67	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W28.	Entire wetland area	+67	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W35.	Entire wetland area	+66	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W36.	Entire wetland area	+63	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W39.	Entire wetland area	+64	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W43.	Entire wetland area	+63	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W43A.	Entire wetland area	+63	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W43B.	Entire wetland area	+63	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W43C.	Entire wetland area	+63	Unincorporated Areas of Polk County.

Flooding Source(s)	Location of Referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W45.	Entire wetland area	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W61.	Entire wetland area	+63	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W64.	Entire wetland area	+66	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W65.	Entire wetland area	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W72.	Entire wetland area	+65	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W74.	Entire wetland area	+64	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W9.	Entire wetland area	+68	Unincorporated Areas of Polk County.
London Creek Watershed Unnamed Wetland Area—ICPR Node 28W91.	Entire wetland area	+66	Unincorporated Areas of Polk County.
Snell Creek	At the Lake Marion Creek and Lake Marion Creek Outlet confluence.	+67	Unincorporated Areas of Polk County.
	Approximately 1.5 miles upstream of Cypress Parkway	+72	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Polk County

Maps are available for inspection at 330 West Church Street, Bartow, FL 33830.

Alcona County, Michigan (All Jurisdictions)
Docket No.: FEMA–B–1208

Lake Huron	Entire shoreline within community	+583	City of Harrisville, Township of Alcona, Township of Harrisville, Township of Haynes.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Harrisville

Maps are available for inspection at City Hall, 200 5th Street, Harrisville, MI 48740.

Township of Alcona

Maps are available for inspection at the Alcona Township Hall, 5576 North U.S. Route 23, Black River, MI 48721

Township of Harrisville

Maps are available for inspection at the Township Hall, 114 South Poor Farm Road, Harrisville, MI 48740.

Township of Haynes

Maps are available for inspection at the Haynes Township Hall, 3930 East McNeill Road, Lincoln, MI 48742.

Jackson County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1210

Black River	Approximately 0.94 mile downstream of County Highway K.	+831	Ho-Chunk Nation.
	Approximately 0.48 mile downstream of County Highway K.	+833	

Flooding Source(s)	Location of Referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Trempealeau River	Approximately 0.41 mile upstream of the French Creek confluence.	+875	Village of Taylor.
	Approximately 0.39 mile upstream of Bridge Street	+882	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Ho-Chunk Nation
Maps are available for inspection at W9814 Airport Road, Black River Falls, WI 54615.
Village of Taylor
Maps are available for inspection at 420 2nd Street, Taylor, WI 54659.

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

Dated: August 1, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–20134 Filed 8–15–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
Unincorporated Areas of Mingo County, West Virginia Docket No.: FEMA–B–1208				
West Virginia	Unincorporated Areas of Mingo County.	Mate Creek	Approximately 0.21 mile downstream of Norfolk & Western Railway (immediately downstream of County Route 9).	+706

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Mingo County

Maps are available for inspection at the Mingo County Floodplain Management Office, 75 East 2nd Avenue, Room 325, Williamson, WV 25661.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Chicot County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1087			
Flooding effects of Caney Bayou.	Approximately 0.55 mile north of the intersection of Grant Street and Beouff Street.	+110	City of Eudora.
	Approximately 1,035 feet south of the intersection of Camille Street and Lee Street.	+110	
Macon Bayou	Just upstream of Private Road	+108	City of Eudora.
	Just upstream of Verser Road	+108	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Eudora

Maps are available for inspection at City Hall, 239 South Main Street, Eudora, AR 71640.

Logan County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1117			
Proctor Branch	Approximately 400 feet upstream of Bismarck Lane	+525	City of Russellville, Unincorporated Areas of Logan County.
	Approximately 0.3 mile upstream of the confluence with Proctor Branch Tributary A.	+599	
Proctor Branch Tributary A	Just upstream of the confluence with Proctor Branch	+585	City of Russellville.
	Approximately 1,100 feet upstream of the confluence with Proctor Branch.	+601	
Proctor Branch Tributary B	At the confluence with Proctor Branch	+579	City of Russellville, Unincorporated Areas of Logan County.
	Approximately 200 feet downstream of Hi-View Drive	+592	
Town Branch	Approximately 800 feet downstream of Concord Road	+517	City of Russellville, Unincorporated Areas of Logan County.
	Just downstream of Newton Road	+563	
	Just upstream of West 9th Street (U.S. Route 431)	+621	
	Approximately 1,900 feet upstream of West 9th Street (U.S. Route 431).	+623	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Town Branch Tributary D	Approximately 350 feet upstream of the confluence with Town Branch Tributary E.	+607	Unincorporated Areas of Logan County.
	Approximately 700 feet upstream of Warren Road	+643	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Russellville

Maps are available for inspection at 168 South Main Street, Russellville, KY 42276.

Unincorporated Areas of Logan County

Maps are available for inspection at 299 West 3rd Street, Russellville, KY 42276.

Madison County, Kentucky, and Incorporated Areas
Docket No.: FEMA–B–1101

Brushy Fork	At the confluence with Silver Creek	+922	City of Berea, Unincorporated Areas of Madison County.
	Approximately 305 feet upstream of Mt. Vernon Road	+976	
Calloway Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 3,680 feet upstream of the confluence with the Kentucky River.	+590	Unincorporated Areas of Madison County.
Clear Creek 1 (backwater effects from Kentucky River).	From the confluence with Muddy Creek to approximately 635 feet upstream of Doylesville Road.	+600	Unincorporated Areas of Madison County.
Dreaming Creek Tributary	At the confluence with Dreaming Creek	+837	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 0.7 mile upstream of Old Wilderness Trail	+917	
Drowning Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 845 feet upstream of the confluence with Drowning Creek Tributary 3.	+620	Unincorporated Areas of Madison County.
Drowning Creek Tributary 3 (backwater effects from Kentucky River).	From the confluence with Drowning Creek to approximately 1,245 feet upstream of the confluence with Drowning Creek.	+620	Unincorporated Areas of Madison County.
East Fork Silver Creek (backwater effects from Silver Creek).	From the confluence with Silver Creek to approximately 80 feet upstream of Gabbard Town Road.	+843	City of Berea, Unincorporated Areas of Madison County.
Falling Branch (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.5 mile upstream of the confluence with the Kentucky River.	+619	Unincorporated Areas of Madison County.
Flint Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.5 mile upstream of the confluence with the Kentucky River.	+615	Unincorporated Areas of Madison County.
Hines Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 2,284 feet upstream of the confluence with the Kentucky River.	+586	Unincorporated Areas of Madison County.
Jacks Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 2,120 feet upstream of the confluence with the Kentucky River.	+585	Unincorporated Areas of Madison County.
Kentucky River	At the confluence with Paint Lick Creek	+573	Unincorporated Areas of Madison County.
	At the confluence with Drowning Creek	+620	
Kentucky River Tributary 3 (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.8 mile upstream of the confluence with the Kentucky River.	+618	Unincorporated Areas of Madison County.
Muddy Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.6 mile upstream of Doylesville Road.	+600	Unincorporated Areas of Madison County.
Old Town Branch (backwater effects from Taylor Fork).	From the confluence with Taylor Fork to approximately 1,950 feet upstream of the confluence with Taylor Fork.	+829	Unincorporated Areas of Madison County.
Otter Creek	Approximately 0.7 mile downstream of Four Mile Road	+800	City of Richmond, Unincorporated Areas of Madison County.
	Just upstream of Catalpa Loop	+843	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Otter Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 680 feet upstream of Boonesborough Road.	+594	Unincorporated Areas of Madison County.
Otter Creek Tributary 1	At the confluence with Otter Creek	+843	City of Richmond, Unincorporated Areas of Madison County.
	Just downstream of Big Hill Avenue	+890	
Otter Creek Tributary 2	At the confluence with Otter Creek	+814	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 755 feet upstream of Douglas Court	+895	
Paint Lick Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 1,135 feet downstream of the confluence with Sledd Branch.	+573	Unincorporated Areas of Madison County.
Rocky Lick Branch (backwater effects from Kentucky River).	From the confluence with Muddy Creek to approximately 430 feet downstream of Walker Parke Road.	+600	Unincorporated Areas of Madison County.
Silver Creek	Just downstream of Richmond Road North	+904	City of Berea, Unincorporated Areas of Madison County.
	Approximately 525 feet upstream of KY–21	+944	
Silver Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 813 feet upstream of the confluence with Jackson Branch.	+576	Unincorporated Areas of Madison County.
Stony Fork (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 858 feet upstream of Whitlock Road.	+577	Unincorporated Areas of Madison County.
Tate Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to just upstream of Tates Creek Road.	+583	City of Richmond, Unincorporated Areas of Madison County.
Taylor Fork	Approximately 0.5 mile upstream of Curtis Pike	+829	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 0.7 mile upstream of the confluence with Taylor Fork Tributary 1.	+970	
Taylor Fork Tributary 1	At the confluence with Taylor Fork	+930	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 0.5 mile upstream of the confluence with Taylor Fork.	+978	
Taylor Fork Tributary 2	At the confluence with Taylor Fork	+884	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 100 feet downstream of Vickers Drive	+958	
Taylor Fork Tributary 2A	At the confluence with Taylor Fork Tributary 2	+897	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 1,775 feet upstream of the confluence with Taylor Fork Tributary 2.	+929	
Taylor Fork Tributary 3	At the confluence with Taylor Fork	+878	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 0.5 mile upstream of the confluence with Taylor Fork.	+931	
Taylor Fork Tributary 4	At the confluence with Taylor Fork	+874	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 0.4 mile upstream of the confluence with Taylor Fork.	+928	
Taylor Fork Tributary 5	At the confluence with Taylor Fork	+865	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 200 feet upstream of Alycia Drive	+916	
Taylor Fork Tributary 6	At the confluence with Taylor Fork	+834	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 850 feet upstream of Idylwild Court	+944	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Taylor Fork Tributary 7	At the confluence with Taylor Fork	+829	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 1,855 feet upstream of the confluence with Taylor Fork.	+843	
Terrill Branch (backwater effects from Silver Creek).	From the confluence with Silver Creek to approximately 0.4 mile upstream of the confluence with Silver Creek.	+911	City of Berea, Unincorporated Areas of Madison County.
Upper Tate Creek	Approximately 310 feet downstream of Finney Fork Road	+784	City of Richmond, Unincorporated Areas of Madison County.
	Approximately 945 feet upstream of Stocker Drive	+928	
Walnut Meadow Branch	Approximately 460 feet downstream of Guynn Road	+893	City of Berea, Unincorporated Areas of Madison County.
	Approximately 640 feet upstream of Ginger Drive	+935	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Berea
Maps are available for inspection at 212 Chestnut Street, Berea, KY 40403.

City of Richmond
Maps are available for inspection at 239 West Main Street, Richmond, KY 40475.

Unincorporated Areas of Madison County
Maps are available for inspection at 101 West Main Street, Richmond, KY 40475.

Carroll County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1169

Big Creek (backwater effects from Missouri River).	From the Grand River confluence to approximately 2.7 miles upstream of County Road 335.	+649	Unincorporated Areas of Carroll County.
Grand River (backwater effects from Missouri River).	From the Missouri River confluence to the upstream side of the railroad.	+649	Unincorporated Areas of Carroll County.
Missouri River	At the Grand River confluence	+645	City of Dewitt, City of Norborne, Town of Carrollton, Unincorporated Areas of Carroll County.
	At the Ray County boundary	+689	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Dewitt
Maps are available for inspection at the Carroll County Courthouse, 8 South Main Street, Suite 6, Carrollton, MO 64633.

City of Norborne
Maps are available for inspection at City Hall, 109 East 2nd Street, Norborne, MO 64668.

Town of Carrollton
Maps are available for inspection at City Hall, 206 West Washington Avenue, Carrollton, MO 64633.

Unincorporated Areas of Carroll County
Maps are available for inspection at the Carroll County Courthouse, 8 South Main Street, Suite 6, Carrollton, MO 64633.

Juniata County, Pennsylvania (All Jurisdictions)
Docket No.: FEMA–B–1207

Susquehanna River	At the downstream Northumberland County boundary	+403	Township of Susquehanna.
	At the West Mahantango Creek confluence	+405	
Tuscarora Creek	Approximately 0.9 mile upstream of Groninger Valley Road.	+445	Township of Spruce Hill.
	Approximately 3.1 miles upstream of Groninger Valley Road.	+461	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
West Mahantango Creek	At the Susquehanna River confluence	+405	Township of Susquehanna.
	Approximately 60 feet downstream of Old Trail Road	+407	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Township of Spruce Hill
Maps are available for inspection at the Spruce Hill Township Secretary's Office, 727 Half Moon Road, Port Royal, PA 17082.

Township of Susquehanna
Maps are available for inspection at the Susquehanna Township Hall, 358 Fairground Road, Liverpool, PA 17045.

Harrison County, West Virginia, and Incorporated Areas
Docket No.: FEMA–B–1210

Bingamon Creek (backwater effects from West Fork River).	At the West Fork River confluence	+902	Unincorporated Areas of Harrison County.
	Approximately 1.53 miles upstream of the West Fork River confluence.	+902	
Booths Creek	At the Marion County boundary	+959	Unincorporated Areas of Harrison County.
	At the Thomas Fork confluence	+1000	
Tenmile Creek (backwater effects from West Fork River).	At the West Fork River confluence	+921	Town of Lumberport.
	Approximately 1.45 miles upstream of West Fork River confluence.	+921	
Thomas Fork	At the Booths Creek confluence	+1000	City of Bridgeport, Unincorporated Areas of Harrison County.
	Approximately 420 feet downstream of Benedum Road	+1060	
West Fork River	At the upstream side of State Route 20	+921	Town of Lumberport.
	At the Tenmile Creek confluence	+921	
West Fork River	Approximately 0.45 mile downstream of Water Street	+972	Town of West Milford.
	Approximately 0.47 mile upstream of West Milford Dam	+975	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bridgeport
Maps are available for inspection at City Hall, 515 West Main Street, Bridgeport, WV 26330.

Town of Lumberport
Maps are available for inspection at the Town Hall, 200 Main Street, Lumberport, WV 26386.

Town of West Milford
Maps are available for inspection at the Town Hall, 925 Liberty Street, West Milford, WV 26451.

Unincorporated Areas of Harrison County
Maps are available for inspection at the Harrison County Courthouse, 301 West Main Street, Clarksburg, WV 26301.

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

Dated: August 1, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–20136 Filed 8–15–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
Unincorporated Areas of Washington County, Alabama Docket No.: FEMA–B–1218				
Alabama	Unincorporated Areas of Washington County.	Tombigbee River	Approximately 1,056 feet downstream of the railroad.	+35
			Approximately 2.1 miles upstream of the railroad.	+36

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified

ADDRESSES

Unincorporated Areas of Washington County

Maps are available for inspection at 45 Court Street, Chatom, AL 36518

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Sonoma County, California, and Incorporated Areas Docket No.: FEMA–B–1200			
Colgan Creek	Approximately 500 feet upstream of Llano Road	+80	City of Santa Rosa, Unincorporated Areas of Sonoma County.
	Approximately 0.98 mile upstream of Meda Avenue	+356	
Naval Creek	Approximately 960 feet upstream of Llano Road	+79	City of Santa Rosa, Unincorporated Areas of Sonoma County.
	Approximately 0.57 mile upstream of Wright Road	+97	
Roseland Creek	Approximately 0.5 mile downstream of Llano Road	+79	City of Santa Rosa, Unincorporated Areas of Sonoma County.
	Approximately 1,000 feet upstream of Dutton Avenue	+142	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Santa Rosa

Maps are available for inspection at 100 Santa Rosa Avenue, Room 3, Santa Rosa, CA 95404.

Unincorporated Areas of Sonoma County

Maps are available for inspection at 575 Administration Drive, Room 100A, Santa Rosa, CA 95404.

Mesa County, Colorado, and Incorporated Areas Docket No.: FEMA–B–1220			
Leach Creek	Approximately 200 feet upstream of U.S. Route 6/U.S. Route 50.	+4,547	City of Grand Junction, Unincorporated Areas of Mesa County.
	Approximately 0.55 mile upstream of Summer Hill Way	+4751	
North Leach Creek	At the Leach Creek confluence	+4,561	City of Grand Junction.
	Approximately 200 feet upstream of G Road	+4,567	
Ranchmen's Ditch	At the Mesa Mall/Patterson Road Storm Sewer output	+4,547	City of Grand Junction.
	Approximately 0.45 mile upstream of North 12th Street	+4,688	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Grand Junction

Maps are available for inspection at 250 North 5th Street, Grand Junction, CO 81501.

Unincorporated Areas of Mesa County

Maps are available for inspection at 544 Rood Avenue, Grand Junction, CO 81502.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Anne Arundel County, Maryland, and Incorporated Areas Docket No.: FEMA–B–1101			
Cabin Branch	Approximately 122 feet downstream of Chessie System	+7	Unincorporated Areas of Anne Arundel County.
	Approximately 325 feet upstream of Andover Road	+118	
Franklin Branch	At the Midway Branch confluence	+127	Unincorporated Areas of Anne Arundel County.
	Approximately 780 feet upstream of Clark Road	+214	
Hall Creek	At the most downstream Calvert County boundary	+40	Unincorporated Areas of Anne Arundel County.
	At the most upstream Calvert County boundary	+52	
Little Patuxent River	Approximately 600 feet upstream of the Patuxent River confluence.	+46	Unincorporated Areas of Anne Arundel County.
	Approximately 1,456 feet upstream of Brock Bridge Road	+132	
Marley Creek	Approximately 485 feet upstream of Arundel Expressway	+7	Unincorporated Areas of Anne Arundel County.
	Approximately 165 feet upstream of Elevation Road	+26	
Midway Branch	At the Little Patuxent River confluence	+85	Unincorporated Areas of Anne Arundel County.
	Approximately 0.58 mile upstream of Clark Road	+211	
Patapsco River	Approximately 0.77 mile downstream of the Harbor Tunnel Thruway.	+12	Unincorporated Areas of Anne Arundel County.
	Approximately 200 feet upstream of I–195	+26	
Patuxent River	Approximately 0.56 mile downstream of Southern Maryland Boulevard.	+8	Unincorporated Areas of Anne Arundel County.
	Approximately 0.57 mile upstream of Laurel Fort Meade Road.	+140	
Sawmill Creek	At the upstream side of Crain Highway	+10	Unincorporated Areas of Anne Arundel County.
	Approximately 400 feet upstream of Washington Baltimore and Annapolis Road.	+105	
Severn Run	Approximately 0.43 mile downstream of Veterans Highway.	+7	Unincorporated Areas of Anne Arundel County.
	Approximately 0.5 mile upstream of Telegraph Road	+98	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Anne Arundel County

Maps are available for inspection at the Anne Arundel County Permit Application Center, 2664 Riva Road, Annapolis, MD 21401.

Menominee County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1208			
Green Bay	Entire shoreline within community	+585	City of Menominee, Township of Cedarville, Township of Ingallston, Township of Menominee.
Menominee River	At the Green Bay confluence	+585	City of Menominee.
	Approximately 700 feet downstream of Canadian National Railway.	+585	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Menominee

Maps are available for inspection at City Hall, 2511 10th Street, Menominee, MI 49858.

Township of Cedarville

Maps are available for inspection at the Cedarville Township Hall, Old Mill Road and M–35, Cedar River, MI 49887.

Township of Ingallston

Maps are available for inspection at the Ingallston Township Hall, W3790 Town Hall Lane No. 13.5, Wallace, MI 49893.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Township of Menominee			
Maps are available for inspection at the Township Hall, N2283 O1 Drive, Menominee, MI 49858.			
Huntingdon County, Pennsylvania (All Jurisdictions) **Docket No.: FEMA–B–1166**			
Crooked Creek	Approximately 0.88 mile downstream of Beaver Lane	+628	Township of Walker.
	Approximately 0.70 mile downstream of Beaver Lane	+633	
Hares Valley Creek	Approximately 800 feet downstream of Pennsylvania Railroad.	+586	Township of Union.
	Approximately 500 feet upstream of Pennsylvania Railroad.	+586	
Hill Valley Creek	Approximately 240 feet downstream of Norfolk Southern Railroad.	+555	Township of Shirley.
	Approximately 90 feet upstream of Norfolk Southern Railroad.	+555	
Juniata River	Approximately 0.39 mile downstream of Bridge Street	+584	Township of Union.
	Approximately 1,670 feet downstream of Bridge Street	+584	
Juniata River	Approximately 0.75 mile downstream of North Jefferson Street.	+569	Township of Brady, Township of Shirley.
	Approximately 0.53 mile downstream of North Jefferson Street.	+569	
Juniata River	Just upstream of U.S. Route 22 (William Penn Highway)	+613	Township of Henderson, Township of Smithfield.
	Approximately 200 feet upstream of U.S. Route 22 (William Penn Highway).	+614	
Juniata River	Approximately 2 miles downstream of the confluence with Shaver Creek.	+671	Township of Logan.
	Approximately 140 feet downstream of the confluence with Shaver Creek.	+674	
Juniata River	Approximately 1.72 miles upstream of Bridge Street (Cypress Island Bridge).	+638	Township of Porter.
	Approximately 1.78 miles upstream of Bridge Street (Cypress Island Bridge).	+638	
Little Juniata River	Approximately 1,450 feet upstream of Norfolk Southern Railroad.	+847	Borough of Birmingham.
	Approximately 0.52 mile upstream of Norfolk Southern Railroad.	+848	
Little Juniata River	Approximately 440 feet downstream of the Pemberton Road Bridge.	+797	Township of Spruce Creek.
	Approximately 300 feet downstream of Birmingham Pike (Railroad Bridge).	+813	
Murray Run	Approximately 280 feet downstream of Murray Run Road	+691	Township of Henderson.
	Approximately 170 feet downstream of Murray Run Road	+691	
Standing Stone Creek	Approximately 1.57 miles downstream of Stone Creek Ridge Road.	+661	Township of Oneida.
	Approximately 1.55 miles downstream of Stone Creek Ridge Road.	+661	
Three Springs Creek	Approximately 800 feet downstream of Hudson Street	+700	Borough of Three Springs.
	Approximately 800 feet upstream of Elliots Run Road	+713	
Unnamed Tributary to Shoup Run.	Approximately 400 feet upstream of Broad Top Mountain Road.	+1,139	Township of Carbon.
	Approximately 520 feet upstream of Broad Top Mountain Road.	+1,142	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Borough of Birmingham
Maps are available for inspection at the Borough Building, 2450 Tyrone Street, Birmingham, PA 16686.

Borough of Three Springs
Maps are available for inspection at the Borough Building, 8444 Hudson Street, Three Springs, PA 17264.

Township of Brady
Maps are available for inspection at the Brady Township Building, 11311 Beatty Road, Mill Creek, PA 17060.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

Township of Carbon
Maps are available for inspection at the Carbon Township Building, 20188 Little Valley Road, Saxton, PA 16678.

Township of Henderson
Maps are available for inspection at the Henderson Township Building, 9024 Sugar Grove Road, Huntingdon, PA 16652.

Township of Logan
Maps are available for inspection at the Logan Township Building, 7228 Diamond Valley, Alexandria, PA 16611.

Township of Oneida
Maps are available for inspection at the Oneida Township Building, 9775 Blair Road, Huntingdon, PA 16652.

Township of Porter
Maps are available for inspection at the Porter Township Building, 7551 Bridge Street, Alexandria, PA 16611.

Township of Shirley
Maps are available for inspection at the Shirley Township Building, 15480 Croghan Pike, Shirleysburg, PA 17260.

Township of Smithfield
Maps are available for inspection at the Smithfield Township Building, 202 South 13th Street, Suite 3, Huntingdon, PA 16652.

Township of Spruce Creek
Maps are available for inspection at the Spruce Creek Township Building, 4602 Eden Road, Tyrone, PA 16686.

Township of Union
Maps are available for inspection at the Union Township Building, 14129 Trough Creek Valley Pike, Huntingdon, PA 16652.

Township of Walker
Maps are available for inspection at the Walker Township Building, 5568 Bouquet Street, McConnellstown, PA 16660.

Thurston County, Washington, and Incorporated Areas
Docket No.: FEMA–B–1185

Deschutes River	Approximately 615 feet downstream of Waldrick Road Southeast.	+240	Unincorporated Areas of Thurston County.
	At the downstream side of Waldrick Road Southeast	+243	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Thurston County
Maps are available for inspection at the Thurston County Courthouse, 2000 Lakeridge Drive Southwest, Olympia, WA 98502.

Juneau County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1210

Baraboo River	At the upstream side of Gehri Road	+913	Unincorporated Areas of Juneau County, Village of Union Center, Village of Wonewoc.
	At the West Branch Baraboo River confluence	+919	
Baraboo River Split Flow	At the Baraboo River divergence	+916	Unincorporated Areas of Juneau County.
	At the Baraboo River convergence	+917	
Cranberry Creek (overflow from Yellow River).	Approximately 1,000 feet downstream of the intersection of 8th Street and 13th Avenue.	+934	Unincorporated Areas of Juneau County.
	At the downstream side of County Highway F	+951	
Gardner Creek (overflow effects from Baraboo River).	At the Sauk County boundary	+907	Unincorporated Areas of Juneau County.
Onemile Creek (backwater effects from Lemonweir River).	At the upstream side of U.S. Route 12	+866	Unincorporated Areas of Juneau County.
	Approximately 1,875 feet upstream of U.S. Route 12	+866	
South Branch Yellow River (backwater effects from Yellow River).	At the downstream side of State Route 80	+899	Unincorporated Areas of Juneau County, Village of Necedah.
Unnamed Ponding Area (backwater effects from Baraboo River).	At the Sauk County boundary	+908	Unincorporated Areas of Juneau County.
Unnamed Ponding Area (backwater effects from Lemonweir River).	Approximately 50 feet west of U.S. Route 12	+866	Ho-Chunk Nation.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
West Branch Baraboo River	At the Baraboo River confluence	+920	Unincorporated Areas of Juneau County, Village of Union Center.
	At the Vernon County boundary	+931	
West Branch Baraboo River Split Flow 1.	At the West Branch Baraboo River divergence	+927	Unincorporated Areas of Juneau County.
	At the West Branch Baraboo River convergence	+929	
West Branch Baraboo River Split Flow 2.	At the West Branch Baraboo River confluence	+929	Unincorporated Areas of Juneau County.
	At the Vernon County boundary	+931	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Ho-Chunk Nation
Maps are available for inspection at W9814 Airport Road, Black River Falls, WI 54615.

Unincorporated Areas of Juneau County
Maps are available for inspection at 220 East State Street, Mauston, WI 53944.

Village of Necedah
Maps are available for inspection at 101 Center Street, Necedah, WI 54646.

Village of Union Center
Maps are available for inspection at 339 High Street, Union Center, WI 53962.

Village of Wonewoc
Maps are available for inspection at 200 West Street, Wonewoc, WI 53968.

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

Dated: August 1, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–20135 Filed 8–15–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

FMCSA Policy on the Timeliness of New Entrant Corrective Action Submissions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of policy.

SUMMARY: FMCSA provides notice of the Agency's policy that it must receive a new entrant motor carrier's evidence of corrective action within 15 days of the date of a new entrant safety audit failure notice or within 10 days of the date of an expedited action notice. A new entrant motor carrier that does not submit evidence of corrective action within these time periods could have its registration revoked and be placed out of service.

DATES: This decision became effective on July 20, 2012 for expedited action notices and will become effective on August 20, 2012 for safety audit failure notices.

FOR FURTHER INFORMATION CONTACT: Thomas Kelly, Office of Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–1812; email *Thomas.Kelly@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA's New Entrant Safety Assurance Program, 49 CFR Part 385, subpart D, applies to new entrant motor carriers domiciled in the United States and Canada. FMCSA published an interim final rule on May 13, 2002 (67 FR 31978), establishing the safety audit process for new entrant motor carriers. In order to improve the effectiveness of the program, FMCSA published a Final Rule on December 16, 2008 (73 FR 76472), amending the regulations to raise the standard of compliance for passing the new entrant safety audit. Appendix A to 49 CFR part 385 explains the safety audit evaluation criteria. In addition, there are sixteen regulations that FMCSA has identified as essential elements of basic safety management controls necessary to operating in interstate commerce. A violation of any one of these sixteen regulations will result in automatic failure of the new entrant safety audit (49 CFR 385.321(b)). A new entrant must successfully comply with the Appendix A criteria and have no violations of the sixteen automatic failure regulation in order to pass the safety audit (49 CFR 385.321(a)).

A new entrant motor carrier that fails the safety audit must provide evidence demonstrating corrective action for all violations contributing to the carrier's failure. Except for certain passenger carriers and hazardous materials carriers which must take corrective action within 45 days, new entrants must take corrective action within 60 days (49 CFR 385.319(c)). If the new entrant fails to submit timely evidence of corrective action that is acceptable to FMCSA, its new entrant registration will be revoked and its interstate motor carrier

operations ordered out of service (49 CFR 385.325(b)).

In addition, a new entrant that commits certain violations listed at 49 CFR 385.308(a) may be subject to an expedited action which may include being subjected to an expedited safety audit or compliance review, or being required to submit evidence demonstrating corrective action (49 CFR 385.308). If the new entrant has already had a safety audit or compliance review, FMCSA will send it a letter advising that it must submit evidence of corrective action within 30 days (49 CFR 385.308(b)(2)). If the new entrant does not respond demonstrating corrective action on the expedited actions within 30 days, its registration will be revoked (49 CFR 385.308(d)).

Policy

FMCSA must receive a new entrant motor carrier's corrective action plan within 15 days of the date of a new entrant safety audit failure notice or within 10 days of the date of an expedited action notice, in order to ensure adequate time for review. Otherwise, the motor carrier risks having its registration revoked and being placed out of service. FMCSA has observed that a number of new entrant carriers have waited until the end of the corrective action periods established in 49 CFR 385.308(b) and 385.319(c) to submit evidence of corrective action, leaving Agency officials little to no time for review. However, § 385.308 requires the carrier to submit evidence *demonstrating* corrective action within 30 days. Similarly, § 385.325(a) requires the new entrant to submit evidence that is *acceptable* to FMCSA *within* the specified corrective action period. If Agency officials do not have sufficient time for review, the Agency cannot make a determination within the appropriate time period as to whether evidence of corrective action has been properly demonstrated, as required by § 385.308, or is acceptable, as required by § 385.325(a).

If FMCSA receives evidence of corrective action within 15 days of the date of the new entrant safety audit failure notice or within 10 days of the date of the expedited action notice, Agency officials will either review and make a decision on whether it is acceptable before the end of the corrective action period or, in the case of new entrant safety audit failures, grant an extension of time to complete the review if the Agency determines that the motor carrier is making a good faith effort to remedy deficiencies. The Agency will not grant an extension in the case of an expedited action notice or for motor carriers that transport passengers or hazardous materials, as defined in 49 CFR 390.5.

If FMCSA receives evidence of corrective action more than 15 days after the date of the new entrant safety audit failure notice or more than 10 days after the date of the expedited action notice, the Agency will not guarantee that the evidence will be considered prior to the expiration of the corrective action period. If the corrective action period expires before the Agency makes a determination, the carrier's registration will be revoked. If the Agency subsequently determines that the corrective action plan is acceptable, the carrier's registration will be immediately reinstated. However, if the Agency subsequently determines that the corrective action plan is not acceptable, the carrier will be required to wait the requisite 30 days before reapplying for new entrant registration in accordance with 49 CFR 385.329.

Issued on: August 8, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–20233 Filed 8–15–12; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register

Vol. 77, No. 159

Thursday, August 16, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0807; Directorate Identifier 2011–NM–191–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A318–111 and –112 airplanes, and Model A319, A320, and A321 series airplanes. This proposed AD was prompted by reports of silicon particles inside the oxygen generator manifolds, which had chafed from the mask hoses during installation onto the generator outlets. This proposed AD would require identifying the part number and serial number of each passenger oxygen container, replacing the oxygen generator manifold of the affected oxygen container with a serviceable manifold, and performing an operational check of the manual mask release and corrective actions if necessary. We are proposing this AD to detect and correct non-serviceable oxygen generator manifolds, which could reduce or block the oxygen supply, which could result in injury to passengers when oxygen supply is needed.

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

ADDRESSES: You may send comments 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Airbus service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* For B/E service information identified in this proposed AD, contact B/E Aerospace Systems GmbH, Revalstrasse 1, 23560 Lubeck, Germany; telephone (49) 451 4093–2976; fax (49) 451 4093–4488. 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 Operations office 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 Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0807; Directorate Identifier 2011–NM–191–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 based on 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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0167, dated September 6, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During production of passenger oxygen containers, the manufacturer B/E Aerospace detected some silicon particles inside the oxygen generator manifolds. Investigation revealed that those particles (chips) had chafed from the mask hoses during installation onto the generator outlets. It was discovered that a defective mask hose installation device had caused the chafing.
>
> This condition, if not detected and corrected, could reduce or block the oxygen supply, possibly resulting in injury to passengers when oxygen supply is needed.
>
> For the reasons described above, this [EASA] AD requires the identification and modification of the affected oxygen container assemblies. This AD also prohibits the installation of the affected containers on any aeroplane as replacement parts.

Required actions also include replacing the oxygen generator manifold of the affected oxygen container with a serviceable manifold, and doing an operational check of the manual mask release and corrective actions if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A320–35A1047, dated March 29, 2011. B/E AEROSPACE has issued Service Bulletin 1XCXX–0100–35–005, Revision 1, dated December 15, 2012; and 22CXX–0100–35–003, Revision 1, dated December 20, 2011. The actions described in this service information are

intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 220 airplanes of U.S. registry. We also estimate that it would take about 3 work-hours per oxygen container to comply with the basic requirements of this proposed AD. The average number of oxygen containers per airplane is 50. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,805,000, or $12,750 per airplane.

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.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

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 AD:

Airbus: Docket No. FAA–2012–0807; Directorate Identifier 2011–NM–191–AD.

(a) Comments Due Date

We must receive comments by October 1, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A318–111 and –112 airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–111, –211, –212, –214, –231, –232, and –233 airplanes; A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers (MSN).

(d) Subject

Air Transport Association (ATA) of America Code 35: Oxygen.

(e) Reason

This AD was prompted by reports of silicon particles inside the oxygen generator manifolds, which had chafed from the mask hoses during installation onto the generator outlets. We are issuing this AD to detect and correct non-serviceable oxygen generator manifolds, which could reduce or block the oxygen supply, which could result in injury to passengers when oxygen supply is needed.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Part Number and Serial Number Identification

Within 4,500 flight cycles, or 6,000 flight hours, or 20 months, whichever occurs first, after the effective date of this AD, identify the part number and serial number of each passenger oxygen container. A review of airplane maintenance records is acceptable in lieu of this identification if the part number and serial number of the oxygen container can be conclusively determined from that review.

(h) Replacement

If the part number and serial number of the container are listed in table 2 and table 1 of this AD: Within the compliance time specified in paragraph (g) of this AD, replace the oxygen generator manifold of the affected oxygen container with a serviceable manifold and do an operational check of the manual mask release, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–35A1047, dated March 29, 2011, except as provided by paragraphs (i)(1) through (i)(4) of this AD. If the operational check fails, before further flight, repair, using a method approved by either the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (or its delegated agent).

TABLE 1—AFFECTED SERIAL NUMBERS

ARBA–0000 to ARBA–9999 inclusive.
ARBB–0000 to ARBB–9999 inclusive.
ARBC–0000 to ARBC–9999 inclusive.
ARBD–0000 to ARBD–9999 inclusive.
ARBE–0000 to ARBE–9999 inclusive.
BEBF–0000 to BEBF–9999 inclusive.
BEBH–0000 to BEBH–9999 inclusive.
BEBK–0000 to BEBK–9999 inclusive.
BEBL–0000 to BEBL–9999 inclusive.
BEBM–0000 to BEBM–9999 inclusive.

TABLE 2—PART NUMBER OF THE AFFECTED PASSENGER EMERGENCY OXYGEN CONTAINER ASSEMBLIES *

Type I—15 Min.			
12C15L215XX0100	12C15R335XX0100	13C15R215XX0100	14C15L335XX0100
12C15L216XX0100	12C15R336XX0100	13C15R216XX0100	14C15L336XX0100
12C15L235XX0100	12C15R475XX0100	13C15R235XX0100	14C15L475XX0100
12C15L236XX0100	12C15R476XX0100	13C15R236XX0100	14C15L476XX0100
12C15L2F5XX0100	12C15R4G5XX0100	13C15R2F5XX0100	14C15L4G5XX0100
12C15L2F6XX0100	12C15R4G6XX0100	13C15R2F6XX0100	14C15L4G6XX0100
12C15L335XX0100	13C15L216XX0100	13C15R335XX0100	14C15R215XX0100
12C15L336XX0100	13C15L235XX0100	13C15R336XX0100	14C15R216XX0100
12C15L475XX0100	13C15L236XX0100	13C15R475XX0100	14C15R235XX0100
12C15L476XX0100	13C15L2F5XX0100	13C15R476XX0100	14C15R236XX0100
12C15L4G5XX0100	13C15L2F6XX0100	13C15R4G5XX0100	14C15R2F5XX0100
12C15L4G6XX0100	13C15L335XX0100	13C15R4G6XX0100	14C15R2F6XX0100
12C15R215XX0100	13C15L336XX0100	14C15L215XX0100	14C15R335XX0100
12C15R216XX0100	13C15L475XX0100	14C15L216XX0100	14C15R336XX0100
12C15R235XX0100	13C15L476XX0100	14C15L235XX0100	14C15R475XX0100
12C15R236XX0100	13C15L4G5XX0100	14C15L236XX0100	14C15R476XX0100
12C15R2F5XX0100	13C15L4G6XX0100	14C15L2F5XX0100	14C15R4G5XX0100
12C15R2F6XX0100	13C15R215XX0100	14C15L2F6XX0100	14C15R4G6XX0100
Type I—22 Min.			
12C22L215XX0100	12C22R335XX0100	13C22R215XX0100	14C22L335XX0100
12C22L216XX0100	12C22R336XX0100	13C22R216XX0100	14C22L336XX0100
12C22L235XX0100	12C22R475XX0100	13C22R235XX0100	14C22L475XX0100
12C22L236XX0100	12C22R476XX0100	13C22R236XX0100	14C22L476XX0100
12C22L2F5XX0100	12C22R4G5XX0100	13C22R2F5XX0100	14C22L4G5XX0100
12C22L2F6XX0100	12C22R4G6XX0100	13C22R2F6XX0100	14C22L4G6XX0100
12C22L335XX0100	13C22L216XX0100	13C22R335XX0100	14C22R215XX0100
12C22L336XX0100	13C22L235XX0100	13C22R336XX0100	14C22R216XX0100
12C22L475XX0100	13C22L236XX0100	13C22R475XX0100	14C22R235XX0100
12C22L476XX0100	13C22L2F5XX0100	13C22R476XX0100	14C22R236XX0100
12C22L4G5XX0100	13C22L2F6XX0100	13C22R4G5XX0100	14C22R2F5XX0100
12C22L4G6XX0100	13C22L335XX0100	13C22R4G6XX0100	14C22R2F6XX0100
12C22R215XX0100	13C22L336XX0100	14C22L215XX0100	14C22R335XX0100
12C22R216XX0100	13C22L475XX0100	14C22L216XX0100	14C22R336XX0100
12C22R235XX0100	13C22L476XX0100	14C22L235XX0100	14C22R475XX0100
12C22R236XX0100	13C22L4G5XX0100	14C22L236XX0100	14C22R476XX0100
12C22R2F5XX0100	13C22L4G6XX0100	14C22L2F5XX0100	14C22R4G5XX0100
12C22R2F6XX0100	13C22R215XX0100	14C22L2F6XX0100	14C22R4G6XX0100
Type II—15 Min.			
22C15L110XX0100	22C15L280XX0100	22C15R110XX0100	22C15R280XX0100
22C15L120XX0100	22C15L290XX0100	22C15R120XX0100	22C15R290XX0100
22C15L130XX0100	22C15L370XX0100	22C15R140XX0100	22C15R370XX0100
22C15L140XX0100	22C15L3J0XX0100	22C15R150XX0100	22C15R3J0XX0100
22C15L150XX0100	22C15L480XX0100	22C15R160XX0100	22C15R480XX0100
22C15L160XX0100	22C15L4H0XX0100	22C15R170XX0100	22C15R4H0XX0100
22C15L170XX0100	22C15L4S0XX0100	22C15R210XX0100	22C15R4S0XX0100
22C15L210XX0100	22C15L4T0XX0100	22C15R220XX0100	22C15R4T0XX0100
22C15L220XX0100	22C15L680XX0100	22C15R240XX0100	22C15R6U0XX0100
22C15L240XX0100	22C15L680XX0100	22C15R270XX0100.	
22C15L270XX0100	22C15L6U0XX0100.		
Type II—22 Min.			
22C22L110XX0100	22C22L280XX0100	22C22R110XX0100	22C22R280XX0100
22C22L120XX0100	22C22L290XX0100	22C22R120XX0100	22C22R290XX0100
22C22L130XX0100	22C22L370XX0100	22C22R140XX0100	22C22R370XX0100
22C22L140XX0100	22C22L3J0XX0100	22C22R150XX0100	22C22R3J0XX0100
22C22L150XX0100	22C22L480XX0100	22C22R160XX0100	22C22R480XX0100
22C22L160XX0100	22C22L4H0XX0100	22C22R170XX0100	22C22R4H0XX0100
22C22L170XX0100	22C22L4S0XX0100	22C22R210XX0100	22C22R4S0XX0100
22C22L210XX0100	22C22L4T0XX0100	22C22R220XX0100	22C22R4T0XX0100
22C22L220XX0100	22C22L680XX0100	22C22R240XX0100	22C22R6U0XX0100
22C22L240XX0100	22C22L6U0XX0100	22C22R270XX0100.	
22C22L270XX0100.			

* Variables XX show the color code of the oxygen container assembly.

(i) Exceptions

(1) Oxygen containers Type I that have been modified in accordance with the Accomplishment Instructions of B/E Aerospace Service Bulletin 1XCXX–0100–35–005, Revision 1, dated December 15, 2012; and oxygen containers Type II that have been modified in accordance with the Accomplishment Instructions of B/E Aerospace Service Bulletin 22CXX–0100–35–003, Revision 1, dated December 20, 2011; are compliant with the requirements of paragraph (h) of this AD.

(2) Airplanes on which Airbus modification 150703 or Airbus modification 150704 have not been embodied in production do not have to comply with the requirements of paragraph (h) of this AD, unless an oxygen container has been replaced since the airplane's entry into service.

(3) Airplanes on which Airbus modification 150703 or Airbus modification 150704 have been embodied in production and which are not listed by model and MSN in Airbus Service Bulletin A320–35A1047, dated March 29, 2011, are not subject to the requirements of paragraphs (g) and (h) of this AD, unless an oxygen container has been replaced since the airplane's entry into service.

(4) Model A319 airplanes that are equipped with a gaseous oxygen system for passengers, installed in production with Airbus modification 33125, do not have the affected passenger oxygen containers installed. Unless these airplanes have been modified in-service (no approved Airbus modification exists), the requirements of paragraphs (g) and (h) of this AD do not apply to these airplanes.

(j) Parts Installation Limitations

As of the effective date of this AD, no person may install an oxygen container having a part number specified in table 2 of this AD and having a serial number specified in table 1 of this AD, on any airplane, unless the container has been modified in accordance with the Accomplishment Instructions of any of the following service bulletins; as applicable:

(1) Airbus Service Bulletin A320–35A1047, dated March 29, 2011.

(2) B/E AEROSPACE Service Bulletin 1XCXX–0100–35–005, Revision 1, dated December 15, 2012.

(3) B/E AEROSPACE Service Bulletin 22CXX–0100–35–003, Revision 1, dated December 20, 2011.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (k)(1) or (k)(2) of this AD.

(1) B/E AEROSPACE Service Bulletin 1XCXX–0100–35–005, dated March 14, 2011.

(2) B/E AEROSPACE Service Bulletin 22CXX–0100–35–003, dated March 17, 2011.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, 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 International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0167, dated September 6, 2011, and the service information specified in paragraphs (m)(1)(i), (m)(1)(ii), and (m)(1)(iii) of this AD, for related information.

(i) Airbus Service Bulletin A320–35A1047, dated March 29, 2011.

(ii) B/E AEROSPACE Service Bulletin 1XCXX–0100–35–005, Revision 1, dated December 15, 2012.

(iii) B/E AEROSPACE Service Bulletin 22CXX–0100–35–003, Revision 1, dated December 20, 2011.

(2) For Airbus service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* For B/E service information identified in this proposed AD, contact B/E Aerospace Systems GmbH, Revalstrasse 1, 23560 Lubeck, Germany; telephone (49) 451 4093–2976; fax (49) 451 4093–4488. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 3, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–20112 Filed 8–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0845; Directorate Identifier 2012–CE–013–AD]

RIN 2120–AA64

Airworthiness Directives; Revo, Incorporated Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain Revo, Incorporated Models COLONIAL C–1, COLONIAL C–2, LAKE LA–4, LAKE LA–4A, LAKE LA–4P, and LAKE LA–4–200 airplanes. The existing AD currently requires a one-time dye-penetrant inspection of the horizontal stabilizer attachment fitting and repetitive visual inspections of the fitting for any evidence of fretting, cracking, or corrosion (with necessary replacement and modification); replacement of the fitting upon reaching the 850-hours time-in-service (TIS) safe life; and reporting to the FAA the results of the initial inspection and any cracks found on repetitive inspections. Since we issued AD 2005–12–02, Revo, Incorporated informed the FAA that while the drawing numbers are different, the attachment fittings on the Model COLONIAL C–1 airplanes are identical in every other respect to those installed on the airplanes referenced in AD 2005–12–02. This proposed AD would retain the actions required by AD 2005–12–02, add the Model COLONIAL C–1 airplanes to the Applicability, and add an optional terminating action for the requirements. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 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 AD, contact Revo, Incorporated, 1396 Grandview Boulevard, Kissimmee, FL 34744; telephone: (407) 847–8080; email: *support@teamlake.com;* Lake Central Air Services, Muskoka Airport, R.R. #1, Gravenhurst, Ontario, Canada P1P 1R1; telephone: (705) 687–4343; email: *akecent@muskoka.com;* Internet: *www.lakecentral.com;* and Robert L. Copeland, 418B Bartow Municipal Airport, Bartow, FL 33830; telephone: none; email: none; Internet: none. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust St., Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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: Hal Horsburgh, Aerospace Engineer, Atlanta Aicraft Certification Office, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5553; fax: (404) 474–5606; email: *hal.horsburgh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0845; Directorate Identifier 2012–CE–013–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

On June 2, 2005, we issued AD 2005–12–02, amendment 39–14118 (70 FR 33820, June 10, 2005), for all Revo, Incorporated (Type Certificate 1A13 formerly held by Colonial Aircraft Company, Lake Aircraft Corporation, Consolidated Aeronautics, Inc., and Global Amphibians LLC) Models COLONIAL C–2, LAKE LA–4, LAKE LA–4A, LAKE LA–4P, and LAKE LA–4–200 airplanes. That AD requires a one-time dye-penetrant inspection of the horizontal stabilizer attachment fitting and repetitive visual inspections of the fitting for any evidence of fretting, cracking, or corrosion (with necessary replacement and modification); replacement of the fitting upon reaching the 850-hours TIS safe life; and reporting to the FAA the results of the initial inspection and any cracks found on repetitive inspections. That AD resulted from several reports of fatigue cracks found in the horizontal stabilizer attachment fitting (part number (P/N) 2–2200–21) of Model LA–4–200 airplanes that were in compliance with AD 98–10–12 (63 FR 26964, May 15, 1998). We issued that AD to detect, correct, and prevent future cracks in the horizontal stabilizer attachment fitting, which could result in failure of the horizontal stabilizer attachment fitting. This failure could result in loss of control of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2005–12–02 (70 FR 33820, June 10, 2005), Revo, Incorporated on January 10, 2012, informed the FAA that while the drawing numbers are different, the attachment fittings on the Model COLONIAL C–1 airplanes are identical in every other respect to those installed on the airplanes referenced in AD 2005–12–02.

Also, since we issued AD 2005–12–02 (70 FR 33820, June 10, 2005), we determined that installation of Supplemental Type Certificate (STC) SA02153NY (part number (P/N) LC–2200–21) or STC SA03217AT (P/N XLS–2–2200–221L/R) terminates the requirements of this AD. The actions required in the instructions for continued airworthiness for the STCs would still apply to airplanes with those STCs installed. We propose to include installation of STC SA02153NY or STC SA03217AT as options to this AD.

Relevant Service Information

We reviewed Revo, Inc. Service Bulletin B–78 R3, dated January 10, 2012; Revo, Inc. Service Bulletin B–78 R2, dated October 26, 2011; and Revo, Inc. Service Bulletin B–78, dated April 3, 1998. The service information describes procedures for:

- Removing the fitting and inspecting (both visual and dye penetrant) for cracks, fretting, or corrosion;
- Replacing the attachment fitting with a new fitting;
- Measuring the gap between the attachment fitting and the horizontal stabilizer skin for proper clearance; and
- Trimming the stabilizer skin to provide proper clearance.

We reviewed Lake Central Aircraft Services Lake Amphibian Stabilizer Fitting LC–2200–21 Installation Instructions, Rev B, dated August 26, 2005, and Lake Central Air Services Stabilizer Fitting LC–2200–21 Maintenance Manual Supplement Document MS–LC–2200–21, Rev B, dated August 26, 2005. The service information describes procedures for installation of the Lake Central Aircraft Services Lake Amphibian stabilizer fitting (STC SA02153NY).

We reviewed XLS Company, LLC Report XLS–2–2200–500, Installation Instructions and Instructions for Continued Airworthiness, Revision B, November 18, 2005. The service information describes procedures for installation of the XLS Co., LLC horizontal stabilizer support fitting system (STC SA03217AT).

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 retain all requirements of AD 2005–12–02 (70 FR 33820, June 10, 2005), add airplanes to the Applicability section, and add an optional terminating action for the requirements of this AD.

Costs of Compliance

We estimate that this proposed AD affects 253 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
Inspect the horizontal stabilizer attachment fitting	24 work-hours × $85 per hour = $2,040.	Not Applicable	$2,040	$516,120
Measure the gap between the horizontal skin and the horizontal stabilizer attachment fitting; trim the skin to provide gap.	1 work-hour × $85 per hour = $85.	Not Applicable	85	21,505

We estimate the following costs to do any necessary replacement 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 replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the horizontal stabilizer attachment fitting	24 work-hours × $85 per hour = $2,040	$761	$2,801

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 have 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 that the 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 removing airworthiness directive (AD) 2005–12–02, Amendment 39–10524 (70 FR 33820, June 10, 2005), and adding the following new AD:

Revo, Incorporated: Docket No. FAA–2012–0845; Directorate Identifier 2012–CE–013–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by October 1, 2012.

(b) Affected ADs

This AD supersedes AD 2005–12–02, Amendment 39–10524 (70 FR 33820, June 10, 2005).

(c) Applicability

This AD applies to the following Revo, Incorporated Models COLONIAL C–1, COLONIAL C–2, LAKE LA–4, LAKE LA–4A, LAKE LA–4P, and LAKE LA–4–200 airplanes, all serial numbers, that are certificated in any category, and have installed horizontal stabilizer attachment fittings part number (P/N) 1–2200–14, 2200–14, or 2–2200–21.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55: Stabilizers.

(e) Unsafe Condition

This AD was prompted by information from Revo, Incorporated that while the drawing numbers are different, the attachment fittings on the Model COLONIAL C–1 airplanes are identical in every other respect to those installed on the airplanes referenced in AD 2005–12–02 (70 FR 33820, June 10, 2005). We are issuing this AD to retain the actions required by AD 2005–12–02, add the Model COLONIAL C–1 airplanes to the Applicability, and add an optional terminating action for the requirements. We are adopting this AD to correct the unsafe condition on these products.

(f) Compliance

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

(g) Dye Penetrant Inspection on the Horizontal Stabilizer Attachment Fitting

(1) *For airplanes with less than 825 hours time-in-service (TIS) on any horizontal stabilizer attachment fitting:* Remove the horizontal stabilizer attachment (P/N 1–2200–14, 2200–14, or 2–2200–21) from the airplane and inspect for cracks (using dye penetrant), fretting, or corrosion using the applicable compliance times stated below. To take ''already done'' credit for this inspection, you must have removed the horizontal stabilizer attachment from the airplane when the inspection was done.

(i) *For COLONIAL C–2, LAKE LA–4, LAKE LA–4A, LAKE LA–4P, and LAKE LA–4–200 airplanes:* Within the next 25 hours TIS after July 8, 2005 (the effective date of AD 2005–12–02 (70 FR 33820, June 10, 2005)). Follow

Revo Inc. Service Bulletin B–78 R3, dated January 10, 2012; or Revo Inc. Service Bulletin B–78 R2, dated April 3, 1998.

(ii) *For COLONIAL C–1 airplanes:* Within the next 25 hours TIS after the effective date of this AD. Follow Revo Inc. Service Bulletin B–78 R3, dated January 10, 2012.

(2) If cracks, fretting, or corrosion is found during the inspection required in either paragraph (g)(1)(i) or (g)(1)(ii) of this AD, before further flight, replace with P/N 2–2200–21. P/N 2–2200–21 is an approved replacement for P/N 1–2200–14 or 2200–14. Follow Revo Inc. Service Bulletin B–78 R3, dated January 10, 2012.

(h) Repetitive Inspections of the Horizontal Stabilizer Attachment Fitting

(1) *For all airplanes:* After the dye-penetrant inspection required in paragraph (g) of this AD or after replacement of the fitting, at intervals not to exceed 50 hours TIS or 12 months, whichever occurs first, repetitively inspect (visual) the horizontal stabilizer attachment fitting using the following procedures:

(i) Move the elevator as required to see the fitting, ensuring that the aft face of the fitting is visible.

(ii) Clean the fitting. Pay special attention to the radius edges of the fitting just outboard of the fitting ear.

(iii) Visually inspect the fitting for cracks using a flashlight (a small magnifying glass or borescope is recommended). Pay special attention again to the radius edges just outboard of the fitting ear. Also, inspect as far forward on the edge that is possible because some cracks progress along the forward face of the fitting that is mostly hidden by the horizontal stabilizer rear beam.

(iv) Reference the sketch on page 1 of Revo Inc. Service Bulletin B–78 R3, dated January 10, 2012, to see where the crack is likely to begin.

(2) If any cracks are found during any of the inspections required in paragraph (h) of this AD, before further flight, replace the fitting following Revo Inc. Service Bulletin B–78 R3, dated January 10, 2012.

(i) Replace the Horizontal Stabilizer Attachment Fitting

(1) *For COLONIAL C–2, LAKE LA–4, LAKE LA–4A, LAKE LA–4P, and LAKE LA–4–200 airplanes:* Before or when the horizontal stabilizer attachment fitting accumulates 850 hours TIS or within 25 hours TIS after July 8, 2005 (the effective date of AD 2005–12–02 (70 FR 33820, June 10, 2005)), whichever occurs later, and repetitively thereafter at intervals not to exceed 850 hours TIS replace the horizontal stabilizer attachment fitting P/N 1–2200–14, 2200–14, or 2–2200–21. P/N 2–2200–21 is an approved replacement part for P/N 1–2200–14 or 2200–14. Follow Revo Inc. Service Bulletin B–78 R3, dated January 10, 2012; or Revo Inc. Service Bulletin B–78 R2, dated April 3, 1998.

(2) *For COLONIAL C–1 airplanes:* Before or when the horizontal stabilizer attachment fitting accumulates 850 hours TIS or within 25 hours TIS after the effective date of this AD, whichever occurs later, and repetitively thereafter at intervals not to exceed 850 hours TIS replace the horizontal stabilizer attachment fitting P/N 1–2200–14, 2200–14, or 2–2200–21. P/N 2–2200–21 is an approved replacement part for P/N 1–2200–14 or 2200–14. Follow Revo Inc. Service Bulletin B–78 R3, dated January 10, 2012.

(3) *For all airplanes:* You may at any time install the following supplemental type certificates (STC) to terminate the requirements of this AD; however, the actions required by the limitations section in the instructions for continued airworthiness for the STCs still apply:

(i) Lake Central Aircraft Services Lake Amphibian stabilizer fitting (STC SA02153NY) following Lake Central Aircraft Services Lake Amphibian Stabilizer Fitting LC–2200–21 Installation Instructions, Rev B, dated August 26, 2005; and Lake Central Air Services Stabilizer Fitting LC–2200–21 Maintenance Manual Supplement Document MS–LC–2200–21, Rev B, dated August 26, 2005; or

(ii) XLS Co., LLC horizontal stabilizer support fitting system (STC SA03217AT) following XLS Company, LLC Report XLS–2–2200–500, Installation Instructions and Instructions for Continued Airworthiness, Revision B, November 18, 2005.

Note for paragraph (i)(3)(ii) of this AD: New parts are not currently available for STC SA03217AT; however, the STC number has been included here for future reference if the parts do become available.

(4) You may install airworthy horizontal stabilizer attachment fitting, P/N 1–2200–14, 2200–14, or 2–2200–21, provided it has less than 850 hours TIS and has been inspected following paragraph (g) of this AD and found free of cracks, fretting, or corrosion.

(j) Measure the Gap Between the Horizontal Skin and the Horizontal Stabilizer Attachment Fitting; Trim the Skin To Provide Gap

(1) *For all airplanes:* Measure the gap between the horizontal skin and the horizontal stabilizer attachment fitting (P/N 1–2200–14, 2200–14, or 2–2200–21). If gap is less than 1/16-inch, trim the skin to provide at least 1/16 inch gap.

(2) Perform the actions in paragraph (j)(1) before further flight after any inspection required by paragraph (g)(1)(i) or (g)(1)(ii) of this AD, or replacement of the fitting required by paragraph (g)(2) or (h)(2) of this AD.

(k) Report the Results of the Initial Inspection

For all airplanes: Using the form in Appendix 1 of this AD report the results of the inspections required in paragraphs (g) and (h) of this AD. Send the results to the FAA using the following contact information: Hal Horsburgh, FAA Atlanta Aircraft Certification Office (ACO), 1701 Columbia Ave., College Park, GA 30337; fax (404) 474–5606; or email: *hal.horsburgh@faa.gov.* Send the results within the following compliance times:

(1) Within 30 days after the inspection required in paragraph (g) of this AD even if no damage is found.

(2) Within 30 days after any inspection required by paragraph (h) of this AD if cracks are found.

(l) Special Flight Permit

Special flight permits are allowed for this AD with these limitations:

(1) Vne reduced to 121 m.p.h. (105 knots); and

(2) No flight into known turbulence.

(m) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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, send it to the attention of the person identified in the Related Information section of this AD.

(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) AMOCs approved for AD 2005–12–02 (70 FR 33820, June 10, 2005) are approved as AMOCs for this AD.

(o) Related Information

(1) For more information about this AD, contact Hal Horsburgh, Aerospace Engineer, Atlanta ACO, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5553; fax: (404) 474–5606; email: *hal.horsburgh@faa.gov.*

(2) For service information identified in this AD, contact Revo, Incorporated, 1396 Grandview Boulevard, Kissimmee, FL 34744; telephone: (407) 847–8080; email: *support@teamlake.com;* Internet: none; Lake Central Air Services, Muskoka Airport, R. R. #1, Gravenhurst, Ontario, Canada P1P 1R1; telephone: (705) 687–4343; email: *akecent@muskoka.com;* Internet: *www.lakecentral.com;* and Robert L. Copeland, 418B Bartow Municipal Airport, Bartow, FL 33830; telephone: none; email: none; Internet: none. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust St., Kansas City, Missouri 64106. For

information on the availability of this material at the FAA, call (816) 329–4148.

Appendix 1 to Docket No. FAA–2012–0845

INSPECTION REPORT for Revo, Incorporated Models COLONIAL C–1, COLONIAL C–2, LAKE LA–4, LAKE LA–4A, LAKE LA–4P, and LAKE LA–4–200 Airplanes

BILLING CODE 4910–13–P

Docket No. FAA-2012-0845 **INSPECTION REPORT for** **Revo, Incorporated Models COLONIAL C-1, COLONIAL C-2, LAKE LA-4, LAKE LA-4A, LAKE LA-4P, and LAKE LA-4-200 Airplanes**	
1. Inspection Performed By:	*2. Telephone:*
3. Aircraft Model:	*4. Aircraft Serial Number:*
5. Date of AD Inspection:	*6. Total hours time-in-service (TIS) on the fitting:*
7. Cracks found? ☐ *Yes* ☐ *No* ☐ *Left fitting* ☐ *Right fitting*	*8. Length of Crack(s):* *Left fitting:* *Right fitting*
9. Fretting found? ☐ *Yes* ☐ *No* ☐ *Left fitting* ☐ *Right fitting*	*10. Corrosion found?* ☐ *Yes* ☐ *No* ☐ *Left fitting* ☐ *Right fitting*
Send to: Hal Horsburgh email hal.horsburgh@faa.gov FAA ACO, Attn: Hal Horsburgh 1701 Columbia Ave College Park, GA 30337 Facsimile: 404-474-5606	

Figure 1 to Appendix 1.

Issued in Kansas City, Missouri, on August 9, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–20107 Filed 8–15–12; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0806; Directorate Identifier 2012–NM–022–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. 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 Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes. This proposed AD was prompted by reports of an in-service incident where the propeller de-icing system became unavailable due to burnt/chafed wires within the alternating current contractor box (ACCB). This proposed AD would require inspection for chafing, damage, and loose wiring within an ACCB and repair if necessary; and would require rework and re-identification of the wiring installation within each ACCB. We are proposing this AD to detect and correct damaged, chafed, or loose wiring within an ACCB, which could affect the operation of the windshield heater, ice detector, angle of attack (AOA) vane heater, pilot probe heater, engine intake heater, or propeller de-icing system, and subsequently adversely affect the airplane's flight characteristics in icing conditions.

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

ADDRESSES: You may send comments 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.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 Operations office 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 Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0806; Directorate Identifier 2012–NM–022–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 based on 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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–03, dated January 11, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There has been one (1) reported in-service incident where the propeller de-icing system became unavailable due to burnt/chafed wires within the Alternating Current Contactor Box (ACCB). There has also been a number of additional minor events of wires found chafed within ACCBs.
>
> An investigation revealed that inadequate clearance between the wires and metallic structure within the ACCB could cause chafed wires.
>
> Damaged, chafed or loose wiring within an ACCB could affect the operation of the windshield heater, ice detector, angle of attack (AOA) vane heater, pitot probe heater, engine intake heater or propeller de-icing system. Loss of one of these systems could adversely affect the aeroplane's flight characteristics in icing conditions.
>
> This [TCCA] Airworthiness Directive (AD) mandates the [visual] inspection [for damaged, chafed, and loose wiring within an ACCB and replace if necessary] and rectification [rework] of the wiring installation within each ACCB.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier, Inc. has issued the following service bulletins:

- Bombardier Service Bulletin 84–24–47, Revision A, dated September 14, 2011.
- Bombardier Service Bulletin 84–24–48, Revision A, dated September 14, 2011.
- Bombardier Service Bulletin 84–24–49, Revision A, dated September 14, 2011.
- Bombardier Service Bulletin 84–24–50, Revision A, dated September 14, 2011.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent

information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 83 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $49,385, or $595 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $0, for a cost of $170 per product. We have no way of determining the number of products that may need these actions.

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.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

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 AD:

Bombardier, Inc.: Docket No. FAA–2012–0806; Directorate Identifier 2012–NM–022–AD.

(a) Comments Due Date

We must receive comments by October 1, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by reports of an in-service incident where the propeller de-icing system became unavailable due to burnt/chafed wires within the alternating current contractor box (ACCB) due to inadequate clearance. We are issuing this AD to detect and correct damaged, chafed, or loose wiring within an ACCB, which could affect the operation of the windshield heater, ice detector, angle of attack (AOA) vane heater, pilot probe heater, engine intake heater, or propeller de-icing system, and subsequently adversely affect the airplane's flight characteristics in icing conditions.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection

For serial numbers 4001 through 4354 and 4356 through 4366: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Do a general visual inspection for chafing, damage, and insulation damage, and rework the wiring within the ACCB, in accordance with the Accomplishment Instructions in the applicable Bombardier service bulletins specified in paragraphs (g)(1) through (g)(4) of this AD. If any chafing, damage, or insulation damage is found, before further flight, replace the damaged wiring, in accordance with the Accomplishment Instructions of the applicable Bombardier service bulletins specified in paragraphs (g)(1) through (g)(4) of this AD.

(1) Bombardier Service Bulletin 84–24–47, Revision A, dated September 14, 2011.

(2) Bombardier Service Bulletin 84–24–48, Revision A, dated September 14, 2011.

(3) Bombardier Service Bulletin 84–24–49, Revision A, dated September 14, 2011.

(4) Bombardier Service Bulletin 84–24–50, Revision A, dated September 14, 2011.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install an ACCB having the combination of part numbers (P/N) and series specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD on any airplane.

(1) P/N 1152130–6, series 1, 2, and 4.

(2) P/N 1152148–6, series 1, 2, 4, and 5.

(3) P/N 1152090–6, series 1, 2, and 4.

(4) P/N 1152124–6, series 1, 2, 4, and 5.

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service bulletins specified in paragraphs (i)(1) through (i)(4) of this AD.

(1) Bombardier Service Bulletin 84–24–47, dated April 26, 2011.

(2) Bombardier Service Bulletin 84–24–48, dated April 26, 2011.

(3) Bombardier Service Bulletin 84–24–49, dated April 26, 2011.

(4) Bombardier Service Bulletin 84–24–50, dated April 26, 2011.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. 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. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to MCAI Canadian Airworthiness Directive CF–2012–03, dated January 11, 2012, and the service information specified in paragraphs (k)(1)(i) through (k)(1)(iv) of this AD, for related information.

(i) Bombardier Service Bulletin 84–24–47, Revision A, dated September 14, 2011.

(ii) Bombardier Service Bulletin 84–24–48, Revision A, dated September 14, 2011.

(iii) Bombardier Service Bulletin 84–24–49, Revision A, dated September 14, 2011.

(iv) Bombardier Service Bulletin 84–24–50, Revision A, dated September 14, 2011.

(2) For service information identified in this AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 3, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–20110 Filed 8–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0809; Directorate Identifier 2011–NM–135–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 supersede an existing airworthiness directive (AD) that applies to certain The Boeing Company Model 757 airplanes equipped with Rolls-Royce RB211–535E engines. The existing AD currently requires repetitive inspections for signs of damage of the aft hinge fittings and attachment bolts of the thrust reversers, and related investigative and corrective actions if necessary. The existing AD also provides for an optional terminating modification for the repetitive inspections. Since we issued the existing AD, we have received reports of incorrectly installed washers under the attachment bolts of the aft hinge fittings of the thrust reversers. For certain airplanes, this proposed AD would add a one-time inspection of the washers installed under the attachment bolts of the aft hinge fittings for correct installation sequence, and reinstallation if necessary. This proposed AD also adds an option for installing a redesigned aft hinge fitting with the trim already done, instead of trimming an existing or new hinge fitting, which is included in the existing optional terminating modification. We are proposing this AD to prevent failure of the attachment bolts and consequent separation of a thrust reverser from the airplane during flight, which could result in structural damage to the airplane.

DATES: We must receive comments on this proposed AD by October 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; 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: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0809; Directorate Identifier 2011–NM–135–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

On June 8, 2008, we issued AD 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008), for certain Model 757 airplanes equipped with Rolls-Royce RB211–535E engines. That AD requires repetitive inspections for signs of damage of the aft hinge fittings and attachment bolts of the thrust reversers, and related investigative and corrective actions if necessary. That AD also provides for an optional terminating modification for the repetitive inspections. That AD resulted from reports of several incidents of bolt failure at the aft hinge fittings of the thrust reversers due to, among other things, high operational loads. We issued that AD to prevent failure of the attachment bolts and consequent separation of a thrust reverser from the airplane during flight, which could

result in structural damage to the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008), we have received reports of incorrectly installed washers installed under the attachment bolts of the aft hinge fittings of the thrust reversers, due to an error in the original service information.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 757–54–0049, Revision 1, dated September 23, 2009; and Revision 2, dated July 27, 2011 (for Model 757–200, –200CB, and –200PF airplanes). We also reviewed Boeing Special Attention Service Bulletin 757–54–0050, Revision 1, dated October 7, 2009; and Revision 2, dated July 27, 2011 (for Model 757–300 airplanes). For Group 1, Configuration 2 airplanes, Revision 1 of these service bulletins adds procedures for a detailed inspection of the washers installed under the attachment bolts of the aft hinge fittings for correct installation sequence, and if incorrect, removal and reinstallation of the washer stack up. Revision 2 of these service bulletins adds an option of installing a redesigned aft hinge fitting with the trim already done, instead of trimming an existing or new hinge fitting.

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 retain all requirements of AD 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008). For certain airplanes, this proposed AD would add a detailed inspection of the washers installed under the attachment bolts of the aft hinge fittings for correct installation sequence, and if incorrect, removal and reinstallation of the washer stack up. This proposed AD would also include an option (as part of the optional terminating action in the existing AD) for installing a redesigned aft hinge fitting designed with the trim already done, instead of trimming an existing or new hinge fitting, which is included in the existing optional terminating modification. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and the Service Information.''

Difference Between the Proposed AD and the Service Information

Although Boeing Special Attention Service Bulletins 757–54–0049 and 757–54–0050, both Revision 2, both dated July 27, 2011, specify that you may contact the manufacturer for repair instructions, this proposed AD would require you to repair 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 389 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
Retained inspections in AD 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008).	2 work-hours × $85 per hour = $170 per inspection cycle.	$0	$170 per inspection cycle	$66,130 per inspection cycle.
Optional modification in AD 2008–13–20 (includes new optional actions).	61 work hours × $85 per hour = $5,185.	5,276	10,461	Up to $4,069,329.
New proposed inspection	6 work-hours × $85 per hour = $510.	0	510	Up to $198,390.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

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 have 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 that the 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 removing airworthiness directive (AD) 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008), and adding the following new AD:

The Boeing Company: Docket No. FAA–2012–0809; Directorate Identifier 2011–NM–135–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by October 1, 2012.

(b) Affected ADs

This AD supersedes AD 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008).

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200CB, –200PF, and –300 series airplanes, certificated in any category; equipped with Rolls-Royce RB211–535E engines.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

(e) Unsafe Condition

This AD results from reports of incorrectly installed washers under the attachment bolts of the aft hinge fittings of the thrust reversers. We are issuing this AD to prevent failure of the attachment bolts and consequent separation of a thrust reverser from the airplane during flight, which could result in structural damage to the airplane.

(f) Compliance

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

(g) Retained Repetitive Inspections/Investigative and Corrective Actions

This paragraph restates the requirements of paragraph (f) of AD 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008), with revised service information. At the time specified in paragraph 1.E. ''Compliance,'' of Boeing Special Attention Service Bulletin 757–54–0049 or 757–54–0050, both dated July 16, 2007, as applicable; except as provided by paragraph (h) of this AD: Do a detailed inspection for signs of damage of the aft hinge fittings and attachment bolts of the thrust reversers by doing all the actions, including all applicable related investigative and corrective actions, as specified in the Accomplishment Instructions of the applicable service bulletins specified in paragraph (g)(1), (g)(2), or (g)(3); or paragraph (g)(4), (g)(5), or (g)(6) of this AD, as applicable. Do all applicable related investigative and corrective actions at the time specified in paragraph 1.E., ''Compliance'' of Boeing Special Attention Service Bulletin 757–54–0049 or 757–54–0050, both dated July 16, 2007. As of the effective date of this AD, only the service bulletin specified in paragraph (g)(3) or (g)(6) of this AD, as applicable, may be used to accomplish the actions required by this paragraph. If any damage is found and the service bulletin identified in paragraph (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), or (g)(6) of this AD specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(1) Boeing Special Attention Service Bulletin 757–54–0049, dated July 16, 2007.

(2) Boeing Special Attention Service Bulletin 757–54–0049, Revision 1, dated September 23, 2009.

(3) Boeing Special Attention Service Bulletin 757–54–0049, Revision 2, dated July 27, 2011.

(4) Boeing Service Bulletin 757–54–0050, dated July 16, 2007.

(5) Boeing Special Attention Service Bulletin 757–54–0050, Revision 1, dated October 7, 2009.

(6) Boeing Special Attention Service Bulletin 757–54–0050, Revision 2, dated July 27, 2011.

(h) Retained Exception to Service Information

This paragraph restates the requirements of paragraph (g) of AD 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008). Where Boeing Special Attention Service Bulletin 757–54–0049 or Boeing Service Bulletin 757–54–0050, both dated July 16, 2007; as applicable; specifies compliance times relative to the date on the service bulletin, this AD requires compliance within the specified compliance time after August 6, 2008 (the effective date of AD 2008–13–20).

(i) Retained Optional Terminating Modification

This paragraph restates the actions specified in paragraph (h) of AD 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008). Accomplishing the preventive modification identified in the service bulletins specified in paragraph (g)(1), (g)(2), or (g)(3); or paragraph (g)(4), (g)(5), or (g)(6) of this AD; as applicable; terminates the repetitive inspections required by paragraph (g) of this AD.

(j) Retained Concurrent Actions

This paragraph restates the requirements of paragraph (i) of AD 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008). Prior to or concurrently with accomplishing the actions identified in the service bulletin specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD; as applicable; accomplish the replacement specified in Boeing Special Attention Service Bulletin 757–54–0015, Revision 3, dated September 19, 1996.

(k) Retained Credit for Previous Actions

This paragraph restates the provisions of paragraph (j) of AD 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008). This paragraph provides credit for the actions required by paragraph (j) of this AD, if those actions were performed before August 6, 2008 (the effective date of AD 2008–13–20) using Boeing Service Bulletin 757–54–0015, dated February 16, 1989; Revision 1, dated December 20, 1990; or Revision 2, dated April 21, 1994 (which are not incorporated by reference in this AD).

(l) New Requirements of This AD: Inspection of Washer Stack Up Sequence/Corrective Action

For Group 1, Configuration 2 airplanes: Within 3,000 flight cycles after the effective date of this AD, do a detailed inspection of the washers installed under the attachment bolts of the aft hinge fittings for correct installation sequence, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–54–0049 or 757–54–0050, both Revision 2, both dated July 27, 2011, as applicable. If an incorrect installation sequence is found, before further flight, remove and reinstall the washer stack up correctly, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–54–0049 or 757–54–0050, both Revision 2, both dated July 27, 2011, as applicable.

(m) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (l) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 757–54–0049, Revision 1, dated September 23, 2009; or Boeing Special Attention Service Bulletin 757–54–0050, Revision 1, dated October 7, 2009; as applicable.

(n) 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, send it to the attention of the person identified in the Related Information section of this AD. Information 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.

(4) AMOCs approved previously in accordance with AD 2008–13–20, Amendment 39–15583 (73 FR 37786, July 2, 2008), are approved as AMOCs for the corresponding provisions of this AD.

(o) Related Information

(1) For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@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; 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.

Issued in Renton, Washington, on August 9, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–20108 Filed 8–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0654; Airspace Docket No. 12–ACE–3]

Proposed Amendment of Class E Airspace; Forest City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Forest City, IA. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Forest City Municipal Airport. Also, this action would update the geographic coordinates of the Forest City nondirectional radio beacon (NDB). The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before October 1, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2012–0654/Airspace Docket No. 12–ACE–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–0654/Airspace Docket No. 12–ACE–3.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Forest City Municipal Airport, Forest City, IA. The geographic coordinates of the Forest City NDB would also be updated to coincide with the FAA's aeronautical database. Controlled airspace is needed for the safety and management of IFR operations at the airport

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with

prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Forest City Municipal Airport, Forest City, IA.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Forest City, IA [Amended]

Forest City Municipal Airport, IA
(Lat. 43°14′05″ N., long. 93°37′27″ W.)
Forest City NDB
(Lat. 43°14′09″ N., long. 93°37′15″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Forest City Municipal Airport, and within 4 miles each side of the 347° bearing from the airport extending from the 6.9-mile radius to 10.6 miles north of the airport, and within 2.6 miles each side of the 162° bearing from the Forest City NDB extending from the 6.9-mile radius to 7.4 miles southeast of the airport.

Issued in Fort Worth, TX, on July 27, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–20143 Filed 8–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1402; Airspace Docket No. 11–AGL–28]

Proposed Amendment of Class E Airspace; Marysville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Marysville, OH. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Union County Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before October 1, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1402/Airspace Docket No. 11–AGL–28, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1402/Airspace Docket No. 11–AGL–28.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Union County Airport, Marysville, OH. Controlled airspace is needed for the safety and management of IFR operations at the airport

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

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

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Marysville, OH [Amended]

Marysville, Union County Airport, OH
(Lat. 40°13′29″ N., long. 83°21′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Union County Airport, and within 2 miles each side of the 263° bearing from the airport extending from the 6.3-mile radius to 9.8 miles west of the airport, and within 2.6 miles each side of the 091° bearing from the airport extending from the 6.3-mile radius to 10.4 miles east of the airport.

Issued in Fort Worth, TX, on August 1, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–20144 Filed 8–15–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0730]

RIN 1625–AA00

Safety Zones; Revolution 3 Triathlon, Lake Erie, Sandusky Bay, Cedar Point, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing two permanent safety zones on Lake Erie near Sandusky, OH. This action is necessary to provide for the safety of life and property on navigable waters and is intended to restrict vessel traffic during the swim portion of the Revolution 3 Triathlon, Lake Erie, Sandusky Bay, OH.

DATES: Comments and related materials must be received by the Coast Guard on or before September 17, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0730 using any one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

Fax: 202–493–2251.

Mail or Delivery: 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. Deliveries are accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418–6040, email *Benjamin.B.Nessia@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:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Public Participation and Information

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when the comment is successfully transmitted. A comment submitted via fax, hand delivery, or mail, will be considered as having been received by the Coast Guard when the comment is received at the Docket Management Facility. 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 the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''OPEN DOCKET FOLDER'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. 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 notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

Each year, the Revolution 3 Triathlon occurs at Cedar Point near Sandusky, OH. This event occurs each year for two consecutive days during the first or second week of September. During the first leg of the event, participants enter the water and swim along a predetermined course. While the primary course is on the eastern side of Cedar Point, an alternate location is on the western side of Cedar Point, in the vicinity of the Cedar Point Marina. The likely combination of large numbers of inexperienced recreational boaters, possibly varying lake conditions and large number of swimmers in the water could easily result in serious injuries or fatalities. The Captain of the Port Detroit proposes to establish this safety zone to protect against such injuries and fatalities.

In the past, the Coast Guard has established temporary safety zones in coordination for this event. For example, temporary safety zones were established in rules published on September 13, 2010 (75 FR 55477), and September 8, 2011 (76 FR 55564). Because this event will recur annually, the Captain of the Port Detroit is proposing to establish a permanent safety zone and thus, alleviate the need to publish TFRs in the future.

C. Discussion of Proposed Rule

As suggested above, this proposed regulation is intended to ensure safety of the public and vessels during the Revolution 3 triathlon. This proposed rule will become effective 30 days after the final rule is published in the **Federal Register**. However, the safety zones will only be enforced annually for two consecutive days during the first or second week of September from 6:50 a.m. until 10 a.m., with exact dates to be determined annually.

The proposed safety zones for the Revolution 3 Triathlon, Lake Erie, Sandusky Bay, Cedar Point, OH, will encompass all waters of Lake Erie, Sandusky Bay, Cedar Point, OH within the swim courses located at position 41–29′–00.04″N 082–40′–48.16″W to 41–29′–19.28″N 082–40′–38.97″W to 41–29′–02.51″N 082–40′–20.82″W to 41–28′–45.52″N 082–40′–35.75″W then following the shoreline to the point of origin. These coordinates are North American Datum of 1983 (NAD 83). In the event that weather requires changing locations an alternate race course site will encompass all waters of Lake Erie, Sandusky Bay, Cedar Point, OH extending outward 100 yards on either side of a line running between 41–28′–38.59″N 082–41′–10.51″W and 41–28′–17.25″N 082–40′–54.09″W running adjacent to the Cedar Point Marina. These coordinates are North American Datum of 1983 (NAD 83).

The Captain of the Port Detroit will use all appropriate means to notify the public when the safety zones in this proposal will be enforced. Consistent with 33 CFR 165.7(a), such means of may include, among other things, publication in the **Federal Register**, Broadcast Notice to Mariners, Local Notice to Mariners, or, upon request, by facsimile (fax). Also, the Captain of the Port will issue a Broadcast Notice to Mariners notifying the public if enforcement these safety zones in this section are cancelled prematurely.

Entry into, transiting, or anchoring within the proposed safety zones during the period of enforcement is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative. The Captain of the Port or his designated representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones established by this proposed rule will be relatively small and enforced for relatively short time. Also, each safety zone is designed to minimize its impact on navigable waters. Furthermore, each safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within any particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through each safety zone when permitted by the Captain of the Port. On the whole, the Coast Guard

expects insignificant adverse impact to mariners from the activation of these safety zones.

2. Impact on Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in the above portions of Lake Erie during the period that either of the proposed safety zones is being enforced.

These proposed safety zones will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the above Regulatory Planning and Review section. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6040, email *Benjamin.B.Nessia@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of safety zones and thus, is categorically excluded under paragraph (34)(g) of the Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.917 to read as follows:

§ 165.917 Safety Zones; Annual Swim Events in the Captain of the Port Detroit Zone.

(a) *Location.* The following locations are designated as safety zones: All waters of Lake Erie within positions 41–29′–00.04″ N 082–40′–48.16″ W to 41–29′–19.28″ N 082–40′–38.97″ W to 41–29′–02.51″ N 082–40″–20.82″ W to 41–28″–45.52″ N 082–40′–35.75″ W then following the shoreline to the point of origin. In the event that weather requires changing locations an alternate race course site will encompass all waters of Lake Erie, Sandusky Bay, Cedar Point, OH extending outward 100 yards on either side of a line running between 41–28′–38.59″ N 082–41′–10.51″ W and 41–28′–17.25″ N 082–40′–54.09″ W running adjacent to the Cedar Point Marina. These coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement period.* These safety zones will be enforced two consecutive mornings during the first or second week in September. Exact dates and times will be determined annually and published annually in the **Federal Register** via a Notice of Enforcement.

(c) *Definitions.* The following definitions apply to this section:

(1) *''On-scene Representative''* means any Coast Guard Commissioned, warrant, or petty officer designated by the Captain of the Port Detroit to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) *''Public vessel''* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative.

(2) These safety zones are closed to all vessel traffic, excepted as may be permitted by the Captain of the Port Detroit or his designated representative. All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within, or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels must operate at the minimum speed necessary to maintain a safe course.

(e) *Exemption.* Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Detroit or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(g) *Notification.* The Captain of the Port Detroit will notify the public that the safety zones in this section are or will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone is cancelled.

Dated: August 6, 2012.

J. E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2012–20092 Filed 8–15–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2011–0453, FRL–9616–1]

Approval and Promulgation of Air Quality Implementation Plans; Vermont: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Vermont State Implementation Plan (SIP) relating to regulation of Greenhouse Gases (GHGs) under Vermont's Prevention of Significant Deterioration (PSD) program. This revision was submitted by Vermont, through the Vermont Department of Environmental Conservation (VT DEC), Air Pollution Control Division on February 14, 2011. It is intended to align Vermont's regulations with EPA's ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule.'' EPA is proposing to approve the revision because the Agency has made the preliminary determination that the SIP revision, already adopted by Vermont as a final effective rule, is in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding PSD permitting for GHGs. The SIP submittal also contains proposed amendments to several other sections of Vermont's SIP not directly related to GHG permitting which EPA is not acting on at this time.

DATES: Comments must be received on or before September 17, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2011–0453, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: dahl.donald@epa.govmailto:.*

3. *Fax:* (617) 918–0657.

4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2011–0453'', Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier:* Deliver your comments to: Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits,

Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R01–OAR–2011–0453.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, Boston, Massachusetts. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

In addition, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency; Air Pollution Control Division, Agency of Natural Resources, 186 Mad River Park, Waitsfield, VT.

FOR FURTHER INFORMATION CONTACT: For information regarding the Vermont SIP, contact Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Mr. Dahl's telephone number is (617) 918–1657; email address: *dahl.donald@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing in this document?

On February 14, 2011, the State of Vermont submitted a formal revision to its State Implementation Plan (SIP). The revisions establish thresholds for GHG emissions in Vermont's PSD regulations at the same emissions thresholds and in the same time-frames as those specified by EPA in the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule'' (75 FR 31514), hereafter referred to as the ''Tailoring Rule,'' ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements for GHGs that they emit. The revisions to the SIP clarify the applicable thresholds in the Vermont SIP, and address the flaw discussed in the ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010) (the ''PSD SIP Narrowing Rule''). In today's action, pursuant to section 110 of the CAA, EPA is proposing to approve these revisions into the Vermont SIP.

EPA is not proposing to take action on various other revisions to Vermont's state implementation plan contained in the February 14, 2011 submittal. Those are changes to Vermont Air Pollution Control Regulations, Chapter 5, Sections 5–101 (changes to the definitions of Emergency use engine, Federal Land Manager, and Public Notice), 5–251, 5–252, 5–401 (except for 5–401(16)), 5–402, 5–404, 5–406, 5–501, and 5–502.

II. What is the background for the action by EPA in this document?

This section briefly summarizes EPA's recent GHG-related actions that provide the background for today's proposed action. More detailed discussion of the background is found in the preambles for those actions. In particular, the background is contained in what we call the GHG PSD SIP Narrowing Rule,[1] and in the preambles to the actions cited therein.

A. GHG-Related Actions

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's proposed action on the Vermont SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[2] the ''Johnson Memo Reconsideration,'' [3] the ''Light-Duty Vehicle Rule,'' [4] and the ''Tailoring Rule.'' Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when

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

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

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

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

they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

PSD is implemented through the SIP system. In December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call and, for some of these states, a Federal Implementation Plan (FIP).[5] Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tpy of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the GHG PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the ''error correction'' provisions of CAA section 110(k)(6).

B. Vermont's Actions

On July 22, 2010, Vermont provided a letter to EPA, in accordance with a request to all States from EPA in the Tailoring Rule, with confirmation that the State has the authority to regulate GHG in its PSD program. The letter also confirmed that current Vermont rules require regulating GHGs at the existing 50 tpy threshold, rather than at the higher thresholds set in the Tailoring Rule. See the docket for this proposed rulemaking for a copy of Vermont's letter.

In the SIP Narrowing Rule, published on December 30, 2010, EPA withdrew its approval of Vermont's SIP (among other SIPs) to the extent the SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.[6] As a result, Vermont's current approved SIP provides the state with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds; and requires new and modified sources to receive a federal PSD permit based on GHG emissions only if they emit at or above the Tailoring Rule thresholds.

The basis for this SIP revision is that limiting PSD applicability to GHG sources to the higher thresholds in the Tailoring Rule is consistent with the SIP provisions that provide required assurances of adequate resources, and thereby addresses the flaw in the SIP that led to the SIP Narrowing Rule. Specifically, CAA section 110(a)(2)(E) includes as a requirement for SIP approval that States provide ''necessary assurances that the State * * * will have adequate personnel [and] funding * * * to carry out such [SIP].'' In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources on grounds that the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,[7] and no State, including Vermont, asserted that it did have adequate resources to do so.[8] In the SIP Narrowing Rule, EPA found that the affected states, including Vermont, had a flaw in their SIPs at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIPs.[9] Accordingly, for each affected state, including Vermont, EPA concluded that EPA's action in approving the SIP was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.[10] EPA recommended that States adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under State law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the Federally approved SIP by clarifying that the SIP applies to only sources at or above the Tailoring Rule thresholds.[11]

III. What is EPA's analysis of Vermont's SIP revision?

The regulatory revisions that VT DEC submitted on February 14, 2011 establish thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under Vermont's PSD program. The revisions also include unrelated changes to other portions of the Vermont air permitting regulations. Specifically, the submittal includes changes to Vermont's regulations at Chapter 5, Air Pollution Control, Subchapter I (Definitions), Subchapter II (Prohibitions), Subchapter IV (Operations and Procedures), and Subchapter V (Review of New Air Contaminant Sources).

Vermont is currently a SIP-approved state for the PSD program. In a letter provided to EPA on July 22, 2010, Vermont notified EPA of its interpretation that the State currently has the authority to regulate GHGs under its PSD regulations. The current Vermont program (adopted prior to the promulgation of EPA's Tailoring Rule) applies to major stationary sources (having the potential to emit at least 50 tpy or more of a regulated NSR pollutant) or major modifications constructing in areas designated attainment or unclassifiable with respect to the NAAQS.

The amendments to Subchapter I that EPA is proposing to approve into Vermont's SIP include: new definitions of ''Greenhouse Gases'' and ''Subject to Regulation,'' amendments to the definition of ''Major Stationary Source,'' and the addition of a provision regarding significance levels of greenhouse gases to the definition of ''Significant.'' EPA is also proposing to approve the classification of certain sources of greenhouse gas emissions as air contaminant sources in Subchapter IV, section 5–401(16).

A. Greenhouse Gases

The changes to Vermont's PSD program regulations regarding greenhouse gases are in most respects substantively the same as the amendments to the federal PSD regulatory provisions in EPA's Tailoring

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

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

[7] Tailoring Rule, 75 FR 31517.

[8] SIP Narrowing Rule, 75 FR 82540.

[9] *Id.* at 82542.

[10] *Id.* at 82544.

[11] *Id.* at 82540.

Rule. However, there are several issues that we note here.

First, Vermont submitted as part of its SIP revision its entire definition of ''significant'' in Section 5–101, not just the addition made to address greenhouse gases. Vermont's definition of ''significant'' in Section 5–101 departs from EPA's definition of ''significant'' at 40 CFR 51.166(b)(23) in two ways. On the one hand, Vermont provides significance levels for several pollutants (asbestos, mercury, beryllium, and vinyl chloride) that are not listed in the federal regulation. On the other hand, Vermont fails to provide significance levels for several pollutants (particulate matter 2.5 microns or less in diameter, municipal waste combustor organics, municipal waste combustor metals, municipal waste combustor acid gases, and municipal solid waste landfill emissions) that are listed in the federal regulation. In the first case, the issue is moot because asbestos, mercury compounds, beryllium compounds, and vinyl chloride are all listed as hazardous air pollutants under Section 112(b) of the Clean Air Act, and Section 112(b)(6) provides that PSD does not apply to hazardous air pollutants listed under Section 112. In the case of the other pollutants, however, the situation is more complex. Vermont's regulation neither specifically provides significance levels for these pollutants (particulate matter 2.5 microns or less in diameter, municipal waste combustor organics, municipal waste combustor metals, municipal waste combustor acid gases, and municipal solid waste landfill emissions) nor provides a default significance threshold of zero. Therefore, Vermont's regulation fails to require application of best available control technology for emissions of these pollutants at any level—even at major source levels. See Section 5–502(3)(a)(i)–(ii) (applying control technology requirement only to emissions that are ''significant'').

Despite this flaw, EPA is nonetheless proposing approval of Vermont's SIP revision. The revised definition adds a significance threshold for ''greenhouse gases,'' which does not exist in the currently approved SIP, and the lack of significance thresholds for particulate matter 2.5 microns or less in diameter, municipal waste combustor organics, municipal waste combustor metals, municipal waste combustor acid gases, and municipal solid waste landfill emissions is a continuation from the currently approved SIP, not a new flaw. For that reason, EPA is proposing to approve Vermont's SIP revision as ''SIP strengthening.''

Several lesser issues require discussion regarding EPA's proposed interpretation of the Vermont regulation. First, Vermont defines ''greenhouse gases'' in Section 5–101 as ''carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other chemical or physical substance emitted into the air that the Secretary may reasonably anticipate to cause or contribute to climate change.'' This definition does not explicitly state whether ''greenhouse gases'' is an aggregate pollutant consisting of six (or more) components, cf. 40 CFR 51.166(b)(48)(i), or six (or more) individual gases. However, elsewhere in Vermont's regulations, ''greenhouse gases'' is referred to in a manner suggesting the aggregate interpretation. *See, e.g.,* Section 5–101 (definition of ''Major Stationary Source'') (referring to ''the air contaminant that is greenhouse gases''). Therefore, EPA proposes to interpret the definition of ''greenhouse gases'' in Section 5–101 as an aggregate pollutant.

Second, Vermont incorporates by reference EPA's definition of ''subject to regulation'' at 40 CFR 51.166(b)(48).[12] This definition provides that the pollutant ''greenhouse gases'' is subject to regulation if ''both a significant emissions increase (as calculated using the procedures in (a)(7)(iv) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section) occur.'' 40 CFR 51.166(b)(48)(iii). This, in turn, incorporates two different elements of the federal PSD regulation: emissions increase calculation, and emissions increase netting. For non-greenhouse gas pollutants, Vermont uses a different emissions increase calculation methodology, and does not allow for netting. However, EPA understands that Vermont intends for its greenhouse gas permitting requirements to match the federal requirements, and consequently EPA is proposing to interpret Vermont's definition of ''subject to regulation'' as including the calculation methodology specified in the federal regulations. See also VT DEC's Jan. 3, 2011 response to comments; response No. 2 (emphasizing VT DEC's ''intent to have the same (and not more stringent) permitting thresholds for greenhouse gases in Vermont as required by federal regulations''), and response No. 8 (''The [VT DEC] intends for the federal netting and baseline calculation procedures to apply for applicability of permitting greenhouse gases.''). Thus, for example, an existing Vermont source, in determining whether a proposed modification's greenhouse gas emissions would be ''subject to regulation,'' would be permitted to use the actual-to-projected-actual applicability test of 40 CFR 51.166(a)(7)(iv)(c), and to incorporate creditable and contemporaneous reductions in actual emissions in calculating the ''net emissions increase.''

Third, in light of the preceding two proposed interpretations, it is possible that an ambiguity may arise if Vermont adds a new component gas to its state-defined ''greenhouse gases'' pollutant but that component gas is not part of the federal ''greenhouse gases'' definition at 40 CFR 51.166(b)(48)(i). In this situation, it may not be clear in any given context whether ''greenhouse gases'' in Vermont's regulations refers to ''greenhouse gases'' as defined by EPA or as defined by Vermont. This could be relevant if, for example, an existing source sought to take credit for reductions in a state-only gas when calculating its net emissions increase of greenhouse gases. Since Vermont's definition of ''subject to regulation'' in Section 5–101 includes all of 40 CFR 51.166(b)(48), it must therefore include the federal definition of ''greenhouse gases'' at 40 CFR 51.166(b)(48)(i). Therefore, EPA proposes to interpret ''greenhouse gases'' in Vermont's regulations as meaning greenhouse gases as defined by 40 CFR 51.166(b)(48)(i) for purposes of the ''subject to regulation'' definition and any reference elsewhere in Vermont's regulations that specifically references the ''subject to regulation'' definition, but as meaning greenhouse gases as defined by Section 5–101 for all other purposes in Vermont's SIP.

Finally, as noted above, the Vermont regulation in several places incorporates federal regulations by reference. See, *e.g.,* Section 5–101 (definition of ''Major Stationary Source'') (referring to ''the thresholds in 40 CFR 51.166(b)(1)(i)''). However, these references do not specify whether the incorporation by reference is intended to be prospective (i.e., to incorporate the federal regulation as it may be amended from time to time, without need for revising the state regulation to accommodate federal regulatory revisions) or fixed. We propose to interpret each incorporation by reference of a federal regulation as referring to the date of adoption of the Vermont regulation, *i.e.,* January 24, 2011.

[12] The Vermont regulation actually refers to ''40 CFR 51.166(48)(b)'' [sic]. See Section 5–101 (definition of ''Subject to Regulation''). We assume this is a clerical error and was intended to refer to § 51.166(b)(48).

B. Other Revisions Adopted by Vermont

Vermont submitted other amendments to its SIP which EPA is not acting on at this time. These amendments include Sections 5–101 (changes to the definitions of Emergency use engine, Federal Land Manager, and Public Notice), 5–251 (NO_X limits), 5–252 (SO_2 limits), 5–401(1–15, 17, and 18) (Classification of Air Contaminant Sources), 5–402 (Written Reports When Requested), 5–404 (Methods of Sampling and Testing of Sources), 5–406 (Required Air Modeling), 5–501 (Review of Construction or Modification of Air Contaminant Sources), and 5–502 (Major Stationary Sources and Major Modifications).

IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve Vermont's February 14, 2011 SIP revision, relating to PSD requirements for GHG-emitting sources. Specifically, Vermont's February 14, 2011 SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

If EPA does approve Vermont's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into Vermont's SIP, then Section 52.2372(b) of 40 CFR part 52, as included in EPA's SIP Narrowing Rule—which codifies EPA's limiting its approval of Vermont's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds—is no longer necessary. In today's proposed action, EPA is also proposing to amend Section 52.2372(b) of 40 CFR part 52 to remove this unnecessary regulatory language.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 2, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2012–20140 Filed 8–15–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 77, No. 159

Thursday, August 16, 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

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the University of Mississippi of University, Mississippi, an exclusive license to U.S. Patent Application Serial No. 13/463,442, ''Anti-Obesity Properties of Pterostilbene'', filed on May 3, 2012.

DATES: Comments must be received on or before September 17, 2012.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2012–20126 Filed 8–15–12; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0052]

Oral Rabies Vaccine Trial; Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and finding of no significant impact relative to an oral rabies vaccination field trial in New Hampshire, New York, Ohio, Vermont, and West Virginia. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Chipman, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chennell Drive, Suite 7, Concord, NH 03301; (603) 223–9623. To obtain copies of the environmental assessment or finding of no significant impact, contact Ms. Beth Kabert, Environmental Coordinator, Wildlife Services, 140–C Locust Grove Road, Pittstown, NJ 08867; (908) 735–5654, fax (908) 735–0821, email: *beth.e.kabert@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS–WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

On July 9, 2012, we published in the **Federal Register** (77 FR 40322–40323, Docket No. APHIS–2012–0052) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed field trial to test the safety and efficacy of an experimental oral rabies vaccine for wildlife in New Hampshire, New York, Ohio, Vermont, and West Virginia.

We solicited comments on the EA for 30 days ending August 8, 2012. We received nine comments by that date. They were from private citizens (including five comments from the same individual), a foreign government, a Federal agency, and a State department of health. Three commenters expressed support for the proposed field trial. One commenter indicated we should prepare an environmental impact statement rather than an EA for this action but did not provide a reason for doing so. Other issues raised by commenters include concerns regarding possible effects on public health and whether the field trial is necessary. The comments, and APHIS' responses to the comments, are presented in an appendix to the EA (see footnote 1).

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the implementation of a field trial to test the safety and efficacy of the AdRG1.3 wildlife rabies vaccine in New Hampshire, New York, Ohio, Vermont, and West Virginia, including portions of U.S. Department of Agriculture (USDA) Forest Service National Forest System lands, but excluding Wilderness Areas. The finding, which is based on the EA, reflects our determination that the distribution of this experimental wildlife rabies vaccine will not have a significant impact on the quality of the human environment.

The EA and FONSI may be viewed on the APHIS Web site at *http://www.aphis.usda.gov/regulations/ws/ws_nepa_environmental_documents.shtml* and on the Regulations.gov Web site (see footnote 1). Copies of the EA and

[1] To view the notice, the comments we received, the EA, and the FONSI, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0052.*

FONSI are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained as described under **FOR FURTHER INFORMATION CONTACT**.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 13th day of August 2012.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–20174 Filed 8–13–12; 4:15 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chequamegon Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chequamegon Resource Advisory Committee will meet in Park Falls, Wisconsin. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held September 14, 2012, and will begin at 10:00 a.m.

ADDRESSES: The meeting will be held at the Forest Service Park Falls Office, Large Conference Room, 1170 4th Ave. South, Park Falls, WI.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Chequamegon-Nicolet National Forest, 113 East Bayfield St., Washburn, WI 54891. Please call ahead to 715–373–2667 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Sarah Holmes, RAC coordinator, USDA, Chequamegon-Nicolet National Forest, 113 East Bayfield St., Washburn, WI 54891; (715) 373–2667; Email *sarahholmes@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Review and status updates on approved Title II projects (2) Recommend funding of Title II project proposals in accordance with Public Law 110–343; and (3) Public Comment. The full agenda may be previewed at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Chequamegon.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. A summary of the meeting will be posted at the above Web site within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 9, 2012.

Paul I.V. Strong,

Forest Supervisor.

[FR Doc. 2012–20109 Filed 8–15–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kisatchie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Kisatchie Resource Advisory Committee will meet in Natchitoches, Louisiana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held September 20, 2012, 6 p.m.

ADDRESSES: The meeting will be held at the National Center for Preservation, Technology and Training on the Northwestern State University campus, 645 University Parkway, Natchitoches, Louisiana.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Supervisor's Office, 2400 Shreveport Hwy, Pineville, Louisiana. Please call ahead to 318–473–7025 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Holly Morgan, RAC Coordinator, USDA, 2500 Shreveport Hwy, Pineville, Louisiana, 71360, 318–473–7194.

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.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Overview of changes, presentation of projects, voting on proposed projects, public comment. A full Agenda, meeting information, and proposed projects may be viewed at the Kisatchie RAC Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/AA30E6FF5FEE96518825767100516D0F?OpenDocument.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Written comments

must be sent to Kisatchie RAC, 2500 Shreveport Hwy, Pineville, LA 71360 Attn: Holly Morgan, or by email to *hmormgan@fs.fed.us,* or via facsimile to 318–473–7117. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/AA30E6FF5FEE96518825767100516D0F?OpenDocument* within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 9, 2012.

Michael L. Balboni,

Forest Supervisor.

[FR Doc. 2012–20111 Filed 8–15–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Permitting, Vessel Identification, and Reporting Requirements for the Pelagic Squid Jig Fishery in the Western Pacific Region.

OMB Control Number: 0648–0589.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 30.

Average Hours Per Response: Permit applications, 30 minutes; logsheets, 15 minutes, vessel identification, 45 minutes.

Burden Hours: 265.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

Federal regulations at Title 50, Part 665, of the Code of Federal Regulations require that owners of vessels fishing for, or landing, pelagic squid in the western Pacific region obtain a permit from NOAA National Marine Fisheries Service (NMFS). In addition, the regulations require vessel operators to report fishing activity and harvest on daily logbooks and mark their vessels for identification: the vessel's official number is required to be displayed on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck.

The information collected is used to identify participants in the fishery, document fishing activities and landings, determine the conditions of the stocks, assess the effectiveness of management measures, evaluate the benefits and costs of changes in management measures, and monitor and respond to accidental takes of protected species, including seabirds, turtles, and marine mammals.

Vessel owners must identify their vessels to assist in aerial and at-sea enforcement of fishing regulations.

Revision: There is now a $32 permit fee.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and daily during fishing trips.

Respondent's Obligation: Mandatory.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 10, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–20100 Filed 8–15–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Annual Economic Survey of Federal Gulf and South Atlantic Shrimp Permit Holders.

OMB Control Number: 0648–0591.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 800.

Average Hours Per Response: 45 minutes.

Burden Hours: 600.

Needs and Uses: This request is for an extension of a currently approved information collection.

That National Oceanic and Atmospheric Administration (NOAA) annually collects socioeconomic data from commercial fishermen in the Gulf of Mexico and South Atlantic shrimp fisheries who hold one or more permits for shrimp fishing in federal waters (United States (U.S.) Exclusive Economic Zone (EEZ)). Information about revenues, variable and fixed costs, capital investment and other socioeconomic information is collected from a random sample of permit holders. This data complements other data already collected and is needed to conduct socioeconomic analyses in support of management of the shrimp fishery and to satisfy legal requirements. The data will be used to assess how fishermen will be impacted by and respond to federal regulation likely to be considered by fishery managers.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 10, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–20101 Filed 8–15–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA950

Takes of Marine Mammals Incidental to Specified Activities; Navy Research, Development, Test and Evaluation Activities at the Naval Surface Warfare Center Panama City Division

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the U.S. Navy (Navy) to take marine mammals, by harassment, incidental to conducting research, development, test and evaluation (RDT&E) activities at the Naval Surface Warfare Center Panama City Division (NSWC PCD).

DATES: This authorization is effective from July 27, 2012, until July 26, 2013.

ADDRESSES: A copy of the application, IHA, and/or a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

FOR FURTHER INFORMATION CONTACT: Shane Guan, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as: ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or

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

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

NMFS received an application on December 28, 2011, from the Navy for the taking, by harassment, of marine mammals incidental to conducting testing of the AN/AQS–20A Mine Reconnaissance Sonar System (hereafter referred to as the Q–20) in the Naval Surface Warfare Center, Panama City Division (NSWC PCD) testing range in the Gulf of Mexico (GOM) from April 2012 through April 2013. The Q–20 sonar test activities are proposed to be conducted in the non-territorial waters of the United States (beyond 12 nautical miles) in the Gulf of Mexico (GOM, see Figure 2–1 of the Navy IHA application).

Description of the Specific Activity

The purpose of the Navy's activities is to meet the developmental testing requirements of the Q–20 system by verifying its performance in a realistic ocean and threat environment and supporting its integration with the Remote Multi-Mission Vehicle (RMMV) and ultimately the Littoral Combat Ship (LCS). Testing would include component, subsystem-level, and full-scale system testing in an operational environment.

The need for the proposed activities is to support the timely deployment of the Q–20 to the operational Navy for Mine Countermeasure (MCM) activities abroad, allowing the Navy to meet its statutory mission to deploy naval forces equipped and trained to meet existing and emergent threats worldwide and to enhance its ability to operate jointly with other components of the armed forces.

The proposed activities are to test the Q–20 from the RMMV and from surrogate platforms such as a small surface vessel or helicopter. The RMMV or surrogate platforms will be deployed from the Navy's new LCS or its surrogates. The Navy is evaluating potential environmental effects associated with the Q–20 test activities proposed for the Q–20 Study Area (see below for detailed description of the Study Area), which includes non-territorial waters of Military Warning Area 151 (W–151; includes Panama City Operating Area). Q–20 test activities occur at sea in the waters present within the Q–20 Study Area. No hazardous waste is generated at sea during Q–20 test activities.

A detailed description of the NSWC PCD's Q–20 test activities is provided in the **Federal Register** for the proposed IHA (77 FR 12010; February 28, 2012), and there was no change in the proposed action from the proposed IHA. Therefore, it is not repeated here.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on February 28, 2012 (77 FR 12010). During the 30-day public comment period, the Marine Mammal Commission (Commission) and a private citizen provided comments.

Comment 1: The Commission recommends that NMFS issue the IHA, but condition it to require the Navy to conduct its monitoring for at least 15 minutes prior to the initiation of and for at least 15 minutes after the cessation of Q–20 testing activities.

Response: NMFS agrees with the Commission's recommendations and

worked with the Navy to incorporate the said condition to require the Navy to conduct its monitoring for at least 15 minutes prior to the initiation of and for at least 15 minutes after the cessation of Q–20 testing activities.

Comment 2: One private citizen wrote against NMFS issuing the IHA to the Navy due to concerns about ''severe injuries and killings to thousands of marine mammals.''

Response: NMFS does not agree with the commenter. As discussed in detail in the **Federal Register** notice for the proposed IHA (77 FR 12010; February 28, 2012) and in sections below, the Navy's Q–20 testing activity would only affect a small number of marine mammals by Level B behavioral harassment. No injury or mortality to marine mammals is expected to occur, nor will be authorized.

Description of Marine Mammals in the Area of the Specified Activity

There are 29 marine mammal species under NMFS' jurisdiction that may occur in the Q–20 Study Area (Table 1). These include 7 mysticetes (baleen whales) and 22 odontocetes (toothed whales). Table 1 also includes the Federal status of these marine mammal species. Six of these marine mammal species under NMFS' jurisdiction are also listed as federally endangered under the Endangered Species Act (ESA) and could potentially occur in the Study Area: the humpback whale, North Atlantic right whale, sei whale, fin whale, blue whale, and sperm whale. Of these 29 species with occurrence records in the Q–20 Study Area, 22 species regularly occur there. These 22 species are: Bryde's whale, sperm whale, pygmy sperm whale, dwarf sperm whale, Cuvier's beaked whale, Gervais' beaked whale, Sowerby's beaked whale, Blainville's beaked whale, killer whale, false killer whale, pygmy killer whale, short-finned pilot whale, Risso's dolphin, melon-headed whale, rough-toothed dolphin, bottlenose dolphin, Atlantic spotted dolphin, pantropical spotted dolphin, striped dolphin, spinner dolphin, Clymene dolphin, and Fraser's dolphin. The remaining 7 species (i.e., North Atlantic right whale, humpback whale, sei whale, fin whale, blue whale, minke whale, and True's beaked whale) are extralimital and are excluded from further consideration of impacts from the NSWC PCD Q–20 testing analysis.

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY FOUND IN THE Q–20 STUDY AREA

Family and scientific name	Common name	Federal status
Order Cetacea		
Suborder Mysticeti (baleen whales)		
Eubalaena glacialis	North Atlantic right whale	Endangered.
Megaptera novaeangliae	Humpback whale	Endangered.
Balaenoptera acutorostrata	Minke whale.	
B. brydei	Bryde's whale.	
B. borealis	Sei whale	Endangered.
B. physalus	Fin whale	Endangered.
B. musculus	Blue whale	Endangered.
Suborder Odontoceti (toothed whales)		
Physeter macrocephalus	Sperm whale	Endangered.
Kogia breviceps	Pygmy sperm whale.	
K. sima	Dwarf sperm whale.	
Ziphius cavirostris	Cuvier's beaked whale.	
Mesoplodon europaeus	Gervais' beaked whale.	
M. Mirus	True's beaked whale.	
M. bidens	Sowerby's beaked whale.	
M. densirostris	Blainville's beaked whale.	
Steno bredanensis	Rough-toothed dolphin.	
Tursiops truncatus	Bottlenose dolphin.	
Stenella attenuata	Pantropical spotted dolphin.	
S. frontalis	Atlantic spotted dolphin.	
S. longirostris	Spinner dolphin.	
S. clymene	Clymene dolphin.	
S. coeruleoalba	Striped dolphin.	
Lagenodephis hosei	Fraser's dolphin.	
Grampus griseus	Risso's dolphin.	
Peponocephala electra	Melon-headed whale.	
Feresa attenuata	Pygmy killer whale.	
Pseudorca crassidens	False killer whale.	
Orcinus orca	Killer whale.	
Globicephala macrorhynchus	Short-finned pilot whale.	

The Navy's IHA application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Atlantic 2011 SAR is available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ao2011.pdf.*

A Brief Background on Sound

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. A summary is included below.

Sound is a wave of pressure variations propagating through a medium (for the sonar considered in this IHA, the medium is marine water). Pressure variations are created by compressing and relaxing the medium. Sound measurements can be expressed in two forms: intensity and pressure. Acoustic intensity is the average rate of energy transmitted through a unit area in a specified direction and is expressed in watts per square meter (W/m^2). Acoustic intensity is rarely measured directly, it is derived from ratios of pressures; the standard reference pressure for underwater sound is 1 μPa; for airborne sound, the standard reference pressure is 20 μPa (Urick, 1983).

Acousticians have adopted a logarithmic scale for sound intensities, which is denoted in decibels (dB). Decibel measurements represent the ratio between a measured pressure value and a reference pressure value (in this case 1 μPa or, for airborne sound, 20 μPa). The logarithmic nature of the scale means that each 10 dB increase is a tenfold increase in power (e.g., 20 dB is a 100-fold increase, 30 dB is a 1,000-fold increase). Humans perceive a 10-dB increase in noise as a doubling of sound level, or a 10 dB decrease in noise as a halving of sound level. The term ''sound pressure level'' implies a decibel measure and a reference pressure that is used as the denominator of the ratio. Throughout this document, NMFS uses 1 μPa as a standard reference pressure unless noted otherwise.

It is important to note that decibels underwater and decibels in air are not the same and cannot be directly compared. To estimate a comparison between sound in air and underwater, because of the different densities of air and water and the different decibel standards (i.e., reference pressures) in water and air, a sound with the same intensity (i.e., power) in air and in water would be approximately 63 dB lower in air. Thus, a sound that is 160 dB loud underwater would have the same approximate effective intensity as a sound that is 97 dB loud in air.

Sound frequency is measured in cycles per second, or Hertz (abbreviated Hz), and is analogous to musical pitch; high-pitched sounds contain high frequencies and low-pitched sounds contain low frequencies. Natural sounds in the ocean span a huge range of frequencies: from earthquake noise at 5 Hz to harbor porpoise clicks at 150,000 Hz (150 kHz). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic and ultrasonic sounds, respectively. A single sound may be made up of many different frequencies together. Sounds made up of only a small range of frequencies are called ''narrowband,'' and sounds with a broad range of frequencies are called ''broadband;'' airguns are an example of a broadband sound source and tactical sonars are an example of a narrowband sound source.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' and estimate the lower and upper frequencies of functional hearing of the groups. Further, the frequency range in which each group's hearing is estimated as being most sensitive is represented in the flat part of the M-weighting functions developed for each group. The functional groups and the associated frequencies are indicated below:

- Low-frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz.
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz.
- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia,* the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz.
- Pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.
- Pinnipeds in Air: Functional hearing is estimated to occur between approximately 75 Hz and 30 kHz.

Because ears adapted to function underwater are physiologically different from human ears, comparisons using decibel measurements in air would still not be adequate to describe the effects of a sound on a whale. When sound travels away from its source, its loudness decreases as the distance traveled (propagates) by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound a kilometer distant. Acousticians often refer to the loudness of a sound at its source (typically measured one meter from the source) as the source level and the loudness of sound elsewhere as the received level. For example, a humpback whale three kilometers from an airgun that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound propagates. As a result, it is important not to confuse source levels and received levels when discussing the loudness of sound in the ocean.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

Metrics Used in This Document

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used in the discussions of acoustic effects in this document.

SPL

Sound pressure is the sound force per unit area, and is usually measured in microPa, where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one square meter. SPL is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa.

SPL (in dB) = 20 log (pressure/reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square, which is the

square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square. SPL does not take the duration of a sound into account. SPL is the applicable metric used in the risk continuum, which is used to estimate behavioral harassment takes (see Level B Harassment Risk Function (Behavioral Harassment) Section).

SEL

SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 microPa^2-s.

SEL = SPL + 10 log(duration in seconds)

As applied to tactical sonar, the SEL includes both the SPL of a sonar ping and the total duration. Longer duration pings and/or pings with higher SPLs will have a higher SEL. If an animal is exposed to multiple pings, the SEL in each individual ping is summed to calculate the total SEL. The total SEL depends on the SPL, duration, and number of pings received. The thresholds that NMFS uses to indicate at what received level the onset of temporary threshold shift (TTS) and permanent threshold shift (PTS) in hearing are likely to occur are expressed in SEL.

Potential Impacts to Marine Mammal Species

The Navy considers that the Q–20 sonar testing activities in the Q–20 Study Area could potentially result in harassment to marine mammals. Although surface operations related to sonar testing involve ship movement in the vicinity of the Q–20 test area, NMFS considers it unlikely that ship strike could occur as analyzed in the **Federal Register** for the proposed IHA (77 FR 12010; February 28, 2012).

Anticipated impacts resulting from the Navy's Q–20 testing activities primary arise from underwater noise due to sonar operations, if marine mammals are in the vicinity of the action area. The following subsection provides a summary of the acoustic effects to marine mammals.

(1) Direct Physiological Effects

Based on the literature, there are two basic ways that Navy sonar might directly result in physical trauma or damage: Noise-induced loss of hearing sensitivity (more commonly-called ''threshold shift'') and acoustically mediated bubble growth. Separately, an animal's behavioral reaction to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the Stranding section.

Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to recognize them) following exposure to a sufficiently intense sound, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is recovery), occurs in specific frequency ranges (e.g., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced by only 6 dB or reduced by 30 dB). PTS is permanent (i.e., there is no recovery), but also occurs in a specific frequency range and amount as mentioned in the TTS description.

The following physiological mechanisms are thought to play a role in inducing auditory TSs: Effects on sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS. For continuous sounds, exposures of equal energy (the same SEL) will lead to approximately equal effects. For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between exposures) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985) (although in the case of Navy sonar, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS).

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS, however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For cetaceans, published data are limited to the captive bottlenose dolphin and beluga whale (Finneran *et al.,* 2000, 2002b, 2005a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpreting environmental cues for purposes such as predator avoidance and prey capture. Depending on the frequency range of TTS degree (dB), duration, and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present.

Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a long term condition. Of note, reduced hearing sensitivity as a simple function of development and aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost. There is no empirical evidence that exposure to

Navy sonar can cause PTS in any marine mammals; instead the probability of PTS has been inferred from studies of TTS (see Richardson *et al.,* 1995).

Acoustically Mediated Bubble Growth

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. Recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at sound exposure levels and tissue saturation levels that are improbable to occur in a diving marine mammal. However, an alternative but related hypothesis has also been suggested: Stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.,* 2003; Fernandez *et al.,* 2005). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Collectively, these hypotheses can be referred to as ''hypotheses of acoustically mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (i.e., rectified diffusion). More recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, Energy Levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003), there is no conclusive evidence of this (Hooker *et al.,* 2011). However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005) concluded that in vivo bubble formation, which may be exacerbated by deep, long duration, repetitive dives may explain why beaked whales appear to be particularly vulnerable to sonar exposures. A recent review of evidence for gas-bubble incidence in marine mammal tissues suggest that diving mammals vary their physiological responses according to multiple stressors, and that the perspective on marine mammal diving physiology should change from simply minimizing nitrogen loading to management of the nitrogen load (Hooker *et al.,* 2011). This suggests several avenues for further study, ranging from the effects of gas bubbles at molecular, cellular and organ function levels, to comparative studies relating the presence/absence of gas bubbles to diving behavior. More information regarding hypotheses that attempt to explain how behavioral responses to Navy sonar can lead to strandings is included in the Behaviorally Mediated Bubble Growth section, after the summary of strandings.

(2) Acoustic Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000; Clark *et al.,* 2009). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus also decreases. This principle is also expected to apply to marine mammals because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995) argued that the maximum radius of influence of an industrial noise (including broadband low frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (i.e., surf noise, prey noise, etc.; Richardson *et al.,* 1995).

The echolocation calls of odontocetes (toothed whales) are subject to masking by high frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (i.e., upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (e.g., adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980).

As mentioned previously, the functional hearing ranges of mysticetes (baleen whales) and odontocetes (toothed whales) all encompass the

frequencies of the sonar sources used in the Navy's Q–20 test activities. Additionally, almost all species' vocal repertoires span across the frequencies of the sonar sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. However, because the pulse length and duty cycle of the Navy sonar signals are of short duration and would not be continuous, masking is unlikely to occur as a result of exposure to these signals during the Q–20 test activities in the designated Q–20 Study Area.

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which are more important than detecting a vocalization (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004; Marten and Marler, 1977; Patricelli *et al.,* 2006). Most animals that vocalize have evolved an ability to make vocal adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing animals will make one or more of the following adjustments to their vocalizations: Adjust the frequency structure; adjust the amplitude; adjust temporal structure; or adjust temporal delivery.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments remain unknown, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006). For example, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

(3) Stress Responses

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995) and altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000) and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle, 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to mid-frequency and low-frequency sounds.

For example, Jansen (1998) reported on the relationship between acoustic

exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise induced physiological transient stress responses in hearing-specialist fish that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses cetaceans use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on cetaceans remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

(4) Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Exposure of marine mammals to sound sources can result in (but is not limited to) the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007).

Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound type affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways) (Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (i.e., calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (i.e., proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

There are only few empirical studies of behavioral responses of free-living cetaceans to military sonar being conducted to date, due to the difficulties in implementing experimental protocols on wild marine mammals.

An opportunistic observation was made on a tagged Blainville's beaked whale (*Mesoplodon densirostris*) before, during, and after a multi-day naval exercise involving tactical mid-frequency sonars within the U.S. Navy's sonar testing range at the Atlantic Undersea Test and Evaluation Center (AUTEC), in the Tongue of the Ocean near Andros Island in the Bahamas (Tyack *et al.,* 2011). The adult male whale was tagged with a satellite transmitter tag on May 7, 2009. During the 72 hrs before the sonar exercise started, the mean distance from whale to the center of the AUTEC range was approximately 37 km. During the 72 hrs sonar exercise, the whale moved several tens of km farther away (mean distance approximately 54 km). The received sound levels at the tagged whale during sonar exposure were estimated to be 146 dB re 1 μPa at the highest level. The tagged whale slowly returned for several days (mean distance approximately 29 km) from 0–72 hours after the exercise stopped (Tyack *et al.,* 2011).

In the past several years, controlled exposure experiments (CEE) on marine mammal behavioral responses to military sonar signals using acoustic tags have been started in the Bahamas, the Mediterranean Sea, southern California, and Norway. These behavioral response studies (BRS), though still in their early stages, have provided some preliminary insights into cetacean behavioral disturbances when exposed to simulated and actual military sonar signals.

In 2007 and 2008, two Blainville's beaked whales were tagged in the AUTEC range and exposed to simulated mid-frequency sonar signals, killer whale (*Orcinus orca*) recordings (in 2007), and pseudo-random noise (PRN, in 2008) (Tyack *et al.,* 2011). For the simulated mid-frequency exposure BRS, the tagged whale stopped clicking during its foraging dive after 9 minutes when the received level reached 138 dB SPL, or a cumulative SEL value of 142 dB re 1 μPa^2-s. Once the whale stopped clicking, it ascended slowly, moving away from the sound source. The whale surfaced and remained in the area for approximately 2 hours before making another foraging dive (Tyack *et al.,* 2011).

The same beaked whale was exposed to a killer whale sound recording during its subsequent deep foraging dive. The whale stopped clicking about 1 minute after the received level of the killer whale sound reached 98 dB SPL, just above the ambient noise level at the whale. The whale then made a long and slow ascent. After surfacing, the whale continued to swim away from the playback location for 10 hours (Tyack *et al.,* 2011).

In 2008, a Blainville's beaked was tagged and exposed with PRN that has the same frequency band as the simulated mid-frequency sonar signal. The received level at the whale ranged from inaudible to 142 dB SPL (144 dB cumulative SEL). The whale stopped clicking less than 2 minutes after exposure to the last transmission and ascended slowly to approximately 600 m. The whale appeared to stop at this depth, at which time the tag unexpectedly released from the whale (Tyack *et al.,* 2011).

During CEEs of the BRS off Norway, social behavioral responses of pilot whales and killer whales to tagging and sonar exposure were investigated. Sonar exposure was sampled for 3 pilot whale

(*Globicephala* spp.) groups and 1 group of killer whales. Results show that when exposed to sonar signals, pilot whales showed a preference for larger groups with medium-low surfacing synchrony, while starting logging, spyhopping and milling. Killer whales showed the opposite pattern, maintaining asynchronous patterns of surface behavior: decreased surfacing synchrony, increased spacing, decreased group size, tailslaps and loggings (Visser *et al.,* 2011).

Although the small sample size of these CEEs reported here is too small to make firm conclusions about differential responses of cetaceans to military sonar exposure, none of the results showed that whales responded to sonar signals with panicked flight. Instead, the beaked whales exposed to simulated sonar signals and killer whale sound recording moved in a well oriented direction away from the source towards the deep water exit from the Tongue of the Ocean (Tyack *et al.,* 2011). In addition, different species of cetaceans exhibited different social behavioral responses towards (close) vessel presence and sonar signals, which elicit different, potentially tailored and species-specific responses (Visser *et al.,* 2011).

Much more qualitative information is available on the avoidance responses of free-living cetaceans to other acoustic sources, like seismic airguns and low-frequency active sonar, than mid-frequency active sonar. Richardson *et al.,* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals.

Behavioral Responses

Southall *et al.,* (2007) reports the results of the efforts of a panel of experts in acoustic research from behavioral, physiological, and physical disciplines that convened and reviewed the available literature on marine mammal hearing and physiological and behavioral responses to man-made sound with the goal of proposing exposure criteria for certain effects. This compilation of literature is very valuable, though Southall *et al.* note that not all data is equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables—such data were reviewed and sometimes used for qualitative illustration, but were not included in the quantitative analysis for the criteria recommendations.

In the Southall *et al.,* (2007) report, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. HFAS/MFAS sonar is considered a non-pulse sound. Southall *et al.,* (2007) summarize the reports associated with low-, mid-, and high-frequency cetacean responses to non-pulse sounds (there are no pinnipeds in the Gulf of Mexico (GOM)) in Appendix C of their report (incorporated by reference and summarized in the three paragraphs below).

The reports that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to HFAS/MFAS) including: Vessel noise, drilling and machinery playback, low frequency M-sequences (sine wave with multiple phase reversals) playback, low frequency active sonar playback, drill vessels, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These reports generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re 1 μPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, however, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts or sound sources, so it is not surprising that responses differ.

The reports that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to HFAS/MFAS) including: Pingers, drilling playbacks, vessel and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), HFAS/MFAS, and non-pulse bands and tones. Southall *et al.* were unable to come to a clear conclusion regarding these reports. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals responded at lower levels in the field).

The reports that address the responses of high-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to HFAS/MFAS) including: acoustic harassment devices, Acoustical Telemetry of Ocean Climate (ATOC), wind turbine, vessel noise, and construction noise. However, no conclusive results are available from these reports. In some cases, high frequency cetaceans (harbor porpoises) are observed to be quite sensitive to a wide range of human sounds at very low exposure RLs (90 to 120 dB). All recorded exposures exceeding 140 dB produced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007).

In addition to summarizing the available data, the authors of Southall *et al.* (2007) developed a severity scaling system with the intent of ultimately being able to assign some level of biological significance to a response. Following is a summary of their scoring system, a comprehensive list of the behaviors associated with each score may be found in the report:

- 0–3 (Minor and/or brief behaviors) includes, but is not limited to: No response; minor changes in speed or locomotion (but with no avoidance); individual alert behavior; minor cessation in vocal behavior; minor changes in response to trained behaviors (in laboratory).
- 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival) includes, but is not limited to: Moderate changes in speed, direction, or dive profile; brief shift in group distribution; prolonged cessation or modification of vocal behavior (duration > duration of sound); minor or moderate individual and/or group avoidance of sound; brief cessation of reproductive behavior; or refusal to initiate trained tasks (in laboratory).
- 7–9 (Behaviors considered likely to affect the aforementioned vital rates) includes, but are not limited to: Extensive of prolonged aggressive behavior; moderate, prolonged or significant separation of females and dependent offspring with disruption of acoustic reunion mechanisms; long-term avoidance of an area; outright panic, stampede, stranding; threatening or attacking sound source (in laboratory).

In Table 2 we have summarized the scores that Southall *et al.* (2007) assigned to the papers that reported behavioral responses of low-frequency cetaceans, mid-frequency cetaceans, and high-frequency cetaceans to non-pulse sounds.

TABLE 4—DATA COMPILED FROM THREE TABLES FROM SOUTHALL ET AL. (2007) INDICATING WHEN MARINE MAMMALS (LOW-FREQUENCY CETACEAN = L, MID-FREQUENCY CETACEAN = M, AND HIGH-FREQUENCY CETACEAN = H) WERE REPORTED AS HAVING A BEHAVIORAL RESPONSE OF THE INDICATED SEVERITY TO A NON-PULSE SOUND OF THE INDICATED RECEIVED LEVEL

[As discussed in the text, responses are highly variable and context specific]

Response score	Received RMS Sound Pressure Level (dB re 1 microPa)											
	80 to <90	90 to <100	100 to <110	110 to <120	120 to <130	130 to <140	140 to <150	150 to <160	160 to <170	170 to <180	180 to <190	190 to <200
9	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
8	.....	M	M	.....	M	.....	M	.....	.....	.....	M	M
7	.....	.....	.....	.....	.....	L	L	.....	.....	.....	.....	.....
6	H	L/H	L/H	L/M/H	L/M/H	L	L/H	H	M/H	M	.....	.....
5	.....	.....	.....	.....	M	.....	.....	.....	.....	.....	.....	.....
4	.....	.....	H	L/M/H	L/M	.....	L	.....	.....	.....	.....	.....
3	.....	M	L/M	L/M	M	.....	.....	.....	.....	.....	.....	.....
2	.....	.....	L	L/M	L	L	L	.....	.....	.....	.....	.....
1	.....	.....	M	M	M	.....	.....	.....	.....	.....	.....	.....
0	L/H	L/H	L/M/H	L/M/H	L/M/H	L	M	.....	.....	.....	M	M

Potential Effects of Behavioral Disturbance

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal. There is little marine mammal data quantitatively relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or unconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time: When animals focus their attention on specific environmental cues, they are not attending to other activities such a foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002).

Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (for example, multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (for example, when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. For example, bighorn sheep and Dall's sheep dedicated more time being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.,* 1991).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the body condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.,* 1996; Madsen, 1994; White, 1983). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46-percent reproductive success compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging), which did not gain mass and had a 17 percent reproductive success. Similar reductions in reproductive success have been reported for mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.,* 1988), caribou disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), caribou disturbed by low-elevation military jetfights (Luick *et al.,* 1996), and caribou disturbed by low-elevation jet flights (Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand). For example, a study of grizzly bears (*Ursus horribilis*) reported that bears disturbed by hikers reduced their energy intake by an average of 12 kcal/min (50.2 × 103kJ/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.,* 1999).

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one

diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

(5) Stranding and Mortality

When a live or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most stranding are unknown (Geraci *et al.,* 1976; Eaton, 1979, Odell *et al.,* 1980; Best, 1982).

Several sources have published lists of mass stranding events of cetaceans during attempts to identify relationships between those stranding events and military sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (IWC, 2005) identified 10 mass stranding events of Cuvier's beaked whales that had been reported and one mass stranding of four Baird's beaked whales (*Berardius bairdii*). The IWC concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been associated with the use of mid-frequency sonar, one of those seven had been associated with the use of low frequency sonar, and the remaining stranding event had been associated with the use of seismic airguns. None of the strandings has been associated with high frequency sonar such as the Q–20 sonar proposed to be tested in this action. Therefore, NMFS does not consider it likely that the proposed Q–20 testing activity would cause marine mammals to strand.

Effects on Marine Mammal Habitat

There are no areas within the NSWC PCD that are specifically considered as important physical habitat for marine mammals.

The prey of marine mammals are considered part of their habitat. The Navy's Final Environmental Impact Statement and Overseas Environmental Impact Statement (FEIS) on the research, development, test and evaluation activities in the NSWC PCD study area contains a detailed discussion of the potential effects to fish from HFAS/MFAS. These effects are the same as expected from the proposed Q–20 sonar testing activities within the same area.

The extent of data, and particularly scientifically peer-reviewed data, on the effects of high intensity sounds on fish is limited. In considering the available literature, the vast majority of fish species studied to date are hearing generalists and cannot hear sounds above 500 to 1,500 Hz (depending upon the species), and, therefore, behavioral effects on these species from higher frequency sounds are not likely. Moreover, even those fish species that may hear above 1.5 kHz, such as a few sciaenids and the clupeids (and relatives), have relatively poor hearing above 1.5 kHz as compared to their hearing sensitivity at lower frequencies. Therefore, even among the species that have hearing ranges that overlap with some mid- and high frequency sounds, it is likely that the fish will only actually hear the sounds if the fish and source are very close to one another. Finally, since the vast majority of sounds that are of biological relevance to fish are below 1 kHz (e.g., Zelick *et al.,* 1999; Ladich and Popper, 2004), even if a fish detects a mid-or high frequency sound, these sounds will not mask detection of lower frequency biologically relevant sounds. Based on the above information, there will likely be few, if any, behavioral impacts on fish.

Alternatively, it is possible that very intense mid- and high frequency signals could have a physical impact on fish, resulting in damage to the swim bladder and other organ systems. However, even these kinds of effects have only been shown in a few cases in response to explosives, and only when the fish has been very close to the source. Such effects have never been indicated in response to any Navy sonar. Moreover, at greater distances (the distance clearly would depend on the intensity of the signal from the source) there appears to be little or no impact on fish, and particularly no impact on fish that do not have a swim bladder or other air bubble that would be affected by rapid pressure changes.

Mitigation Measures

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The National Defense Authorization Act (NDAA) of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The Q–20 sonar testing activities described in the Navy's IHA application are considered military readiness activities.

For the proposed Q–20 sonar testing activities in the GOM, NMFS worked with the Navy to develop mitigation measures. The following mitigation measures are required in the IHA issued to the Navy to take marine mammals incidental to its Q–20 testing activities.

Personnel Training

Marine mammal mitigation training for those who participate in the active sonar activities is a key element of the protective measures. The goal of this training is for key personnel onboard Navy platforms in the Q–20 Study Area to understand the protective measures and be competent to carry them out. The Marine Species Awareness Training (MSAT) is provided to all applicable participants, where appropriate. The program addresses environmental protection, laws governing the protection of marine species, Navy stewardship, and general observation information including more detailed information for spotting marine mammals. Marine mammal observer training will be provided before active sonar testing begins.

Marine observers would be aware of the specific actions to be taken based on the RDT&E platform if a marine mammal is observed. Specifically, the following requirements for personnel training would apply:

- All marine observers onboard platforms involved in the Q–20 sonar test activities will review the NMFS-approved MSAT material prior to use of active sonar.
- Marine Observers shall be trained in marine mammal recognition. Marine Observer training shall include completion of the Marine Species Awareness Training, instruction on governing laws and policies, and overview of the specific Gulf of Mexico species present, and observer roles and responsibilities.
- Marine observers will be trained in the most effective means to ensure quick and effective communication within the

command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

Range Operating Procedures

The following procedures would be implemented to maximize the ability of Navy personnel to recognize instances when marine mammals are in the vicinity.

(1) Observer Responsibilities

- Marine observers will have at least one set of binoculars available for each person to aid in the detection of marine mammals.
- Marine observers will conduct monitoring for at least 15 minutes prior to the initiation of and for at least 15 minutes after the cessation of Q–20 testing activities.
- Marine observers will scan the water from the ship to the horizon and be responsible for all observations in their sector. In searching the assigned sector, the lookout will always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout will hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout will scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They will search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses will be lowered to allow the eyes to rest for a few seconds, and then the lookout will search back across the sector with the naked eye.
- Observers will be responsible for informing the Test Director of any marine mammal that may need to be avoided, as warranted.
- These procedures would apply as much as possible during RMMV operations. When an RMMV is operating over the horizon, it is impossible to follow and observe it during the entire path. An observer will be located on the support vessel or platform to observe the area when the system is undergoing a small track close to the support platform.

(2) Operating Procedures

- Test Directors will, as appropriate to the event, make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible, consistent with the safety of the ship.
- During Q–20 sonar activities, personnel will utilize all available sensor and optical system (such as Night Vision Goggles) to aid in the detection of marine mammals.
- Navy aircraft participating will conduct and maintain, when operationally feasible, required, and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.
- Marine mammal detections by aircraft will be immediately reported to the Test Director. This action will occur when it is reasonable to conclude that the course of the ship will likely close the distance between the ship and the detected marine mammal.
- Special conditions applicable for dolphins only: If, after conducting an initial maneuver to avoid close quarters with dolphins, the Test Director or the Test Director's designee concludes that dolphins are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.
- Sonar levels (generally)—Navy will operate sonar at the lowest practicable level, except as required to meet testing objectives.

Clearance Procedures

When the test platform (surface vessel or aircraft) arrives at the test site, an initial evaluation of environmental suitability will be made. This evaluation will include an assessment of sea state and verification that the area is clear of visually detectable marine mammals and indicators of their presence. For example, large flocks of birds and large schools of fish are considered indicators of potential marine mammal presence.

If the initial evaluation indicates that the area is clear, visual surveying will begin. The area will be visually surveyed for the presence of protected species and protected species indicators. Visual surveys will be conducted from the test platform before test activities begin. When the platform is a surface vessel, no additional aerial surveys will be required. For surveys requiring only surface vessels, aerial surveys may be opportunistically conducted by aircraft participating in the test.

Shipboard monitoring will be staged from the highest point possible on the vessel. The observer(s) will be experienced in shipboard surveys, familiar with the marine life of the area, and equipped with binoculars of sufficient magnification. Each observer will be provided with a two-way radio that will be dedicated to the survey, and will have direct radio contact with the Test Director. Observers will report to the Test Director any sightings of marine mammals or indicators of these species, as described previously. Distance and bearing will be provided when available. Observers may recommend a ''Go''/''No Go'' decision, but the final decision will be the responsibility of the Test Director.

Post-mission surveys will be conducted from the surface vessel(s) and aircraft used for pre-test surveys. Any affected marine species will be documented and reported to NMFS. The report will include the date, time, location, test activities, species (to the lowest taxonomic level possible), behavior, and number of animals.

NMFS has carefully evaluated the Navy's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on careful evaluation and assessing these measures, we have determined that the mitigation measures listed above provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Monitoring Measures

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in

increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The RDT&E Monitoring Program, proposed by the Navy as part of its IHA application, is focused on mitigation-based monitoring. Main monitoring techniques include use of civilian personnel as marine mammal observers during pre-, during, and post-, test events.

Systematic monitoring of the affected area for marine mammals will be conducted prior to, during, and after test events using aerial and/or ship-based visual surveys. Observers will record information during the test activity. Data recorded will include exercise information (time, date, and location) and marine mammal and/or indicator presence, species, number of animals, their behavior, and whether there are changes in the behavior. Personnel will immediately report observed stranded or injured marine mammals to NMFS stranding response network and NMFS Regional Office. Reporting requirements are included in the Naval Surface Warfare Center Panama City Division (NSWC PCD) Mission Activities Final Environmental Impact Statement/ Overseas Environmental Impact Statement Annual Activity report as required by its Final Rule (DON, 2009; NMFS, 2010d).

Ongoing Monitoring

The Navy has an existing Monitoring Plan that provides for site-specific monitoring for MMPA and Endangered Species Act (ESA) listed species, primarily marine mammals within the Gulf of Mexico, including marine water areas of the Q–20 Study Area (DON, 2009; NMFS, 2010d). This monitoring plan was initially developed in support of the NSWC PCD Mission Activities Final Environmental Impact Statement/ Overseas Environmental Impact Statement and subsequent Final Rule by NMFS (DON, 2009; NMFS, 2010d). The primary goals of monitoring are to evaluate trends in marine species distribution and abundance in order to assess potential population effects from Navy training and testing events and determine the effectiveness of the Navy's mitigation measures. The monitoring plan, adjusted annually in consultation with NMFS, includes aerial- and ship-based visual observations, acoustic monitoring, and other efforts such as oceanographic observations.

Estimated Take by Incidental Harassment

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

A thorough analysis of the types of Level A and B harassments and the acoustic take criteria are provided in the **Federal Register** notice for the proposed IHA (77 FR 12010; February 28, 2012), and is not repeated here. Although analyses earlier in the document show that there are 22 species of marine mammals are found present in the vicinity of the proposed Q–20 testing area, due to the low density of many species and the small zones of influence resulted from the proposed sonar testing, only six species may be exposed to noise levels that constitute a ''take''. Based on the analysis and acoustical modeling, which can be found in Appendix A Supplemental Information for Underwater Noise Analysis of the Navy's IHA application, NSWC PCD's Q–20 sonar operations in non-territorial waters may expose up to six species to sound likely to result in Level B (behavioral) harassment (Table 1). They include the bottlenose dolphin (*Tursiops truncatus*), Atlantic spotted dolphin (*Stenella frontalis*), pantropical spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), spinner dolphin (*Stenella longirostris*), and Clymene dolphin (*Stenella clymene*). No marine mammals would be exposed to levels of sound likely to result in TTS. The Navy requested that the take numbers of marine mammals for its IHA reflect the exposure numbers listed in Table 1.

TABLE 1—ESTIMATES OF MARINE MAMMAL EXPOSURES FROM SONAR IN NON-TERRITORIAL WATERS PER YEAR

Marine mammal species	Level A	Level B (TTS)	Level B (behavioral)
Bottlenose dolphin (GOM oceanic)	0	0	399
Pantropical spotted dolphin	0	0	126
Atlantic spotted dolphin	0	0	315
Spinner dolphin	0	0	126
Clymene dolphin	0	0	42
Striped dolphin	0	0	42

Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The Navy's specified activities have been described based on best estimates of the number of Q–20 sonar test hours that the Navy will conduct. Taking the above into account, considering the sections discussed below, and dependent upon the implementation of the mitigation measures, NMFS has determined that Navy's Q–20 sonar test activities in the non-territorial waters will have a negligible impact on the marine mammal species and stocks present in the Q–20 Study Area.

Behavioral Harassment

As discussed in the Potential Effects of Exposure of Marine Mammals to Sonar section and illustrated in the conceptual framework, marine mammals can respond to HFAS/MFAS in many different ways, a subset of which qualifies as harassment. One thing that the take estimates do not take into account is the fact that most marine mammals will likely avoid strong sound sources to one extent or another. Although an animal that avoids the sound source will likely still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, etc.), in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response. The Navy proposes only 420 hours of high-frequency sonar operations per year for the Q–20 sonar testing activities, spread among 42 days with an average of 10 hours per day, in the Q–20 Study Area. There will be no powerful tactical mid-frequency sonar involved. Therefore, there will be no disturbance to marine mammals resulting from MFAS systems (such as 53C). The effects that might be expected from the Navy's major training exercises at the Atlantic Fleet Active Sonar Training (AFAST) Range, Hawaii Range Complex (HRC), and Southern California (SOCAL) Range Complex will not occur here. The source level of the Q–20 sonar is much lower than the 53C series MFAS system, and high frequency signals tend to have more attenuation in the water column and are more prone to lose their energy during propagation. Therefore, their zones of influence are much smaller, thereby making it easier to detect marine mammals and prevent adverse effects from occurring.

The Navy has been conducting monitoring activities since 2006 on its sonar operations in a variety of the Naval range complexes (e.g., AFAST, HRC, SOCAL) under the Navy's own protective measures and under the regulations and LOAs. Monitoring reports based on these major training exercises using military sonar have shown that no marine mammal injury or mortality has occurred as a result of the sonar operations (DoN, 2011a; 2011b).

Diel Cycle

As noted previously, many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

In the previous section, we discussed the fact that potential behavioral responses to HFAS/MFAS that fall into the category of harassment could range in severity. By definition, the takes by behavioral harassment involve the disturbance of a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns (such as migration, surfacing, nursing, breeding, feeding, or sheltering) to a point where such behavioral patterns are abandoned or significantly altered. In addition, the amount of time the Q–20 sonar testing will occur is 420 hours per year in non-territorial waters, and is spread among 42 days with an average of 10 hours per day. Thus the exposure is expected to be sporadic throughout the year and is localized within a specific testing site.

TTS

Based on the Navy's model and NMFS analysis, it is unlikely that marine mammals would be exposed to sonar received levels that could cause TTS due to the lower source level (207–212 dB re 1 μPa at 1 m) and high attenuation rate of the HFAS signals (above 35 kHz).

Acoustic Masking or Communication Impairment

As discussed above, it is possible that anthropogenic sound could result in masking of marine mammal communication and navigation signals. However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. The Q–20 ping duration is in milliseconds and the system is relatively low-powered making its range of effect smaller. Therefore, masking effects from the Q–20 sonar signals are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of above 35 kHz (the lower limit of the Q–20 signals), which overlaps with some marine mammal vocalizations; however, it would likely not mask the entirety of any particular vocalization or communication series because the pulse length, frequency, and duty cycle of the Q–20 sonar signal does not perfectly mimic the characteristics of any marine mammal's vocalizations.

PTS, Injury, or Mortality

Based on the Navy's model and NMFS analysis, it is unlikely that PTS, injury, or mortality of marine mammals would occur from the proposed Q–20 sonar testing activities. As discussed earlier, the lower source level (207–212 dB re 1 μPa at 1 m) and high attenuation rate of the HFAS signals (above 35 kHz) make it highly unlikely that any marine mammals in the vicinity would be injured (including PTS) or killed as a result of sonar exposure.

Based on the aforementioned assessment, NMFS determines that approximately 399 bottlenose dolphins, 126 pantropical spotted dolphins, 315 Atlantic spotted dolphins, 126 spinner dolphins, 42 Clymene dolphins, and 42 striped dolphins would be affected by Level B behavioral harassment as a result of the proposed Q–20 sonar testing activities. These numbers represent approximately 10.76%, 0.37%, 1.26%, 6.33%, and 0.64% of bottlenose dolphins (GOM oceanic stock), pantropical spotted dolphins, striped dolphins, spinner dolphins, and Clymene dolphins, respectively, of these species in the GOM region (calculation based on NMFS 2011 US Atlantic and Gulf of Mexico Marine Mammal Stock Assessment). The percentage of potentially affected Atlantic spotted dolphin is unknown since there is no current population assessment of this species in the Gulf of Mexico region. However, based on the most recent abundance estimate published in NMFS Atlantic and GOM SARs conducted in the northern Gulf of Mexico outer continental shelf during fall 2000–2001 and oceanic waters during spring/summer 2003–2004, the population was estimated at 37,611 (NMFS 2011). Using this number, it is estimated that approximately 0.84% of Atlantic spotted dolphins would be taken by Level B behavioral harassment from the Navy's proposed sonar test activities.

The supporting analyses suggest that no marine mammals will be killed, injured, or receive TTS as a result of the

Q–20 sonar testing activities, and no more than a small number of any affected species will be taken in the form of short-term Level B behavioral harassment. In addition, since these impacts will likely not occur in areas and times critical to reproduction, NMFS has determined that the taking of these species as a result of the Navy's Q–20 sonar test will have a negligible impact on the marine mammal species and stocks present in the Q–20 Study Area.

Subsistence Harvest of Marine Mammals

NMFS has determined that the total taking of marine mammal species or stocks from the Navy's Q–20 sonar testing in the Q–20 Study Area would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence uses, since there are no such uses in the specified area.

Endangered Species Act (ESA)

Based on the analysis of the Navy Marine Resources Assessment (MRA) data on marine mammal distributions, there is near zero probability that sperm whale will occur in the vicinity of the Q–20 test area. No other ESA-listed marine mammal is expected to occur in the vicinity of the test area. In addition, acoustic modeling analysis indicates the ESA-listed sperm whale would not be exposed to levels of sound constituting a ''take'' under the MMPA, due to the low source level and high attenuation rates of the Q–20 sonar signal. Therefore, NMFS has determined that ESA-listed species will not be affected as the result of the Navy's Q–20 testing activities.

National Environmental Policy Act (NEPA)

In 2009, the Navy prepared a Final Environmental Impact Statement/ Overseas Environmental Impact Statement for the NSWC PCD Mission Activities (FEIS/OEIS), and NMFS subsequently adopted the FEIS/OEIS for its rule governing the Navy's RDT&E activities in the NSWC PCD Study Area. The currently proposed Q–20 sonar testing activities are similar to the sonar testing activities described in the FEIS/ OEIS for NSWC PCD mission activities. NMFS prepared an Environmental Assessment analyzing the potential impacts of the additional Q–20 sonar test activities and reached a finding of no significant impact.

Dated: July 26, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–20167 Filed 8–15–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–T–2012–0031]

Request for Comments Regarding Amending the First Filing Deadline for Affidavits or Declarations of Use or Excusable Nonuse

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: To further ensure the accuracy of the trademark register, the United States Patent and Trademark Office (''USPTO'') is seeking public comment on a potential legislative change to amend the first filing deadline for Affidavits or Declarations of Use or Excusable Nonuse under Sections 8 and 71 of the Trademark Act from between the fifth and sixth years after the registration date, or the six-month grace period that follows, to between the third and fourth years after the registration date, or the six-month grace period that follows. The change would require Congress to amend the Trademark Act, and the USPTO is interested in receiving public input on whether and why such an amendment is or is not favored.

DATES: Written comments must be received on or before October 15, 2012.

ADDRESSES: The USPTO prefers that comments be submitted via electronic mail message to *TMFRNotices@uspto.gov*. Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Cynthia C. Lynch; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the Office or provided on the Federal eRulemaking Portal should include the docket number (PTO–T–2012–0031). The comments will be available for public inspection on the USPTO's Web site at *http://www.uspto.gov,* and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, at (571) 272–8742.

SUPPLEMENTARY INFORMATION: A Section 8 or 71 affidavit of continued use is a sworn statement that the mark is in use in commerce, filed by the owner of a registration. If the owner is claiming excusable nonuse of the mark, a Section 8 or 71 affidavit of excusable nonuse may be filed. The purpose of the Section 8 or 71 affidavit is to ensure the accuracy of the trademark register by removing ''deadwood,'' or marks no longer in use, from the register.

In the interest of ensuring that registered marks are actually in use in commerce, the USPTO is exploring whether or not there would be a benefit in shortening the first filing deadline for Affidavits or Declarations of Use or Excusable Nonuse under Sections 8 and 71 of the Trademark Act (15 U.S.C. 1058, 1141k). Therefore, the USPTO is providing the public, including user groups, with an opportunity to comment on the idea of a statutory change to shorten the first filing deadline from between the fifth and sixth years after the registration date, or the six-month grace period that follows, to between the third and fourth years after the registration date, or the six-month grace period that follows. Such a change would necessitate a legislative amendment of the Trademark Act, and thus is beyond the authority of the USPTO, but the USPTO wishes to collect public comment that might assist in the consideration of such an amendment, or another alternative.

The accuracy of the trademark register as a reflection of marks that are actually in use in the United States for the goods/services identified in the registration serves an important purpose for the public. Members of the public rely on the register to clear trademarks that they may wish to adopt or are already using. When a party searching the register uncovers a similar mark, registered for goods or services that may be related to the searching party's goods or services, that party may incur a variety of resulting costs and burdens in

assessing and addressing potential consumer confusion. Such costs and burdens may include changing its mark, investigative costs to determine the nature and extent of use of the similar mark and to assess whether any conflict exists, or cancellation proceedings or other litigation to resolve a dispute over the mark. If a registered mark is not actually in use in the United States, or is not in use on all the goods/services recited in the registration, these costs and burdens may be incurred unnecessarily. Thus, improving the accuracy and reliability of the trademark register helps reduce such costs and burdens, and thereby benefits the public.

The current requirement to file an affidavit of use or excusable nonuse during the fifth year after registration developed in 1939. Reasons for adding the requirement included removing deadwood from the register, showing that a mark was still in use at the time it became incontestable, and to correspond to English law. *See Trade-Marks: Hearings on H.R. 4744 Before the Subcomm. on Trademarks of the H. Comm. on Patents,* 76th Cong. 72–74 (1939).

For marks registered under Section 44(e) (15 U.S.C. 1126(e)) or Section 66(a) (15 U.S.C. 1141f(a)) of the Trademark Act, no specimen of use in commerce in the United States is required prior to registration. In addition, recent research indicates that a significantly higher percentage of businesses fail during the first two years after their establishment than during the three years that follow. *See* SBA Office of Advocacy, *Frequently Asked Questions* (Jan. 2011), *http://www.sba.gov/sites/default/files/sbfaq.pdf.* Thus, use of marks registered by such failed businesses may have ceased long before the first Section 8 or 71 affidavit is currently required to be filed. Therefore, the proposed amendment would help ensure the accuracy of the trademark register by more promptly cancelling marks that are not in use.

The USPTO notes that shortening the first filing deadline for Affidavits or Declarations of Use or Excusable Nonuse under Sections 8 and 71 would foreclose the ability that currently exists to combine the filing of an Affidavit or Declaration of Incontestability under Section 15 of the Trademark Act with the first-filed Section 8 or 71 affidavit (*see* 15 U.S.C. 1065). However, the Section 15 affidavit is optional, and it is often filed independently of the Section 8 or 71 affidavit. Moreover, any impact on the ability to file it in combination with a Section 8 or 71 affidavit should be considered within the context of a more accurate register, where deadwood is removed several years sooner.

Please consider responding to the following questions in your comments:

(1) Is ''deadwood'' on the trademark register a concern of yours, and what impact do you believe it has?

(2) Do you favor or oppose an amendment to shorten the first filing deadline for Affidavits or Declarations of Use or Excusable Nonuse under Sections 8 and 71 as a means of ensuring the accuracy of the trademark register? (Please explain why.)

(3) If you favor shortening the deadline, what time period do you believe would be most appropriate for the first filing deadline?

(4) Are you concerned that an amendment to the first Section 8 and 71 affidavit deadline would foreclose the ability to combine the filing with the filing of an Affidavit or Declaration of Incontestability under Section 15? What impact do you believe separating these filings would have?

While the USPTO welcomes and values all comments from the public in response to this request, these comments do not bind the USPTO to any further actions related to the comments. Persons submitting written comments should note that the USPTO will not provide ''comment and response'' analysis, since notice and opportunity for public comment are not required for this notice under 5 U.S.C. 553(b) or any other law.

Dated: August 10, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–20130 Filed 8–15–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–T–2012–0029]

Notice of Inquiry Regarding Adjustment of Fees for Trademark Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The United States Patent and Trademark Office (''USPTO'' or ''Office'') is considering adjusting trademark application filing fees so as to promote efficiency for the USPTO and customers by incentivizing complete electronic communication. The USPTO invites the public to submit comments regarding such possible adjustments.

DATES: Written comments must be received on or before October 15, 2012.

ADDRESSES: The USPTO prefers that comments be submitted via electronic mail message to *TMFRNotices@uspto.gov.* Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Cynthia C. Lynch; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the Office or provided on the Federal eRulemaking Portal should include the docket number (PTO–T–2012–0029). The comments will be available for public inspection on the USPTO's Web site at *http://www.uspto.gov,* and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, at (571) 272–8742.

SUPPLEMENTARY INFORMATION: The USPTO is providing the public, including user groups, with an opportunity to comment on possible adjustments to trademark application fees. In particular, the USPTO is considering adjusting filing fees to incentivize complete electronic communications by reducing the TEAS Plus filing fee and by providing a discount on applications filed using the regular TEAS application form, if the applicant authorizes email communication and agrees to file all responses and other documents electronically during the prosecution of the application. The USPTO is also contemplating increasing the fee for paper applications to more accurately reflect the higher cost of processing such filings.

Please consider responding to the following questions in your comments:

1. Fees for filing an application for registration of a trademark are currently set at:

$375 per class for filing by a paper application;

$325 per class for filing electronically using TEAS;

$275 per class for filing electronically using TEAS Plus (additional requirements apply, including authorizing email communication from the USPTO, agreeing to file all subsequent documents electronically, and selecting goods/services from a pre-approved entry in the U.S. Acceptable Identification of Goods and Services Manual).

Given the objective to increase end-to-end electronic processing of trademark applications, the significantly higher cost of processing paper applications, and the ability of the USPTO to offer some fee reductions, what fee amounts would you consider reasonable for the three existing methods of filing?

2. How much of a discount do you consider appropriate for the proposed TEAS application fee discount if the applicant authorizes email communication and agrees to file all responses and other documents electronically during the prosecution of the application?

3. If you generally file trademark applications using TEAS, but not TEAS Plus, how much of a proposed discount would motivate you to authorize email communication and agree to file all responses and other documents electronically during the prosecution of a trademark application?

4. If the TEAS Plus fee were reduced and remained the lowest fee, and the discount TEAS option were also offered, what would be the impact on the TEAS Plus filing level—i.e. would you be more likely to choose TEAS Plus as the lowest fee, or to select the discount TEAS option with its less burdensome requirements?

5. The cost of processing paper filed applications is substantially higher than electronically filed applications. If you generally file paper trademark applications, would you continue to do so even if the paper application fee were to increase, and why?

6. What advantages and disadvantages do you see in a fee structure that includes the TEAS application fee discount and a significantly higher fee for paper-filed applications?

While the USPTO welcomes and values all comments from the public in response to this notice, these comments do not bind the USPTO to any further actions related to the comments. Persons submitting written comments should note that the USPTO will not provide ''comment and response'' analysis, since notice and opportunity for public comment are not required for this notice under 5 U.S.C. 553(b) or any other law.

Once the USPTO receives comments, the USPTO will decide whether to propose a change in the fees. If the USPTO decides to propose a fee change, the Office will provide an opportunity for public comment in a Notice of Proposed Rulemaking. The USPTO would intend to use the procedures set forth in Section 10 of the Leahy-Smith America Invents Act (''AIA'') for these possible fee changes. Leahy-Smith America Invents Act, Public Law 112–29, § 10, 125 Stat. 284, 316–17 (2011). Those Section 10 procedures include: providing any proposed fee to the Trademark Public Advisory Committee (''TPAC'') prior to issuing a Notice of Proposed Rulemaking; providing at least 30 days for TPAC to deliberate, consider, and comment on such proposal; holding a public hearing relating to such proposal; and making available a written report from TPAC setting forth their comments, advice, and recommendations, which the USPTO shall consider before setting or adjusting fees. *See* AIA § 10(d).

Dated: August 10, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–20127 Filed 8–15–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2012–0033]

Notice of Roundtable on the Implementation of the First Inventor to File Provisions of the Leahy-Smith America Invents Act

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The United States Patent and Trademark Office (USPTO) published a notice of proposed rulemaking and a notice of proposed examination guidelines to implement the first-inventor-to-file provisions of the Leahy-Smith America Invents Act (AIA). The USPTO plans to conduct a roundtable to obtain public input from organizations and individuals on issues relating to the USPTO's proposed implementation of the first-inventor-to-file provisions of the AIA. The USPTO plans to invite a number of roundtable participants from among patent user groups, practitioners, industry, independent inventor organizations, academia, and government. The roundtable also is open for any member of the public to provide input.

DATES: The roundtable will be held on Thursday, September 6, 2012, beginning at 1:30 p.m. Eastern Daylight Time (EDT), and ending at 4:30 p.m. EDT.

The deadline for receipt of written comments in response to the notice of proposed rulemaking and notice of proposed examination guidelines to implement the first-inventor-to-file provisions of the AIA is October 5, 2012.

ADDRESSES: The roundtable will be held at the USPTO in the Madison Auditorium on the concourse level of the Madison Building, which is located at 600 Dulany Street, Alexandria, Virginia 22314.

Comments on the notice of proposed rulemaking should be sent by electronic mail message over the Internet addressed to: fitf_rules@uspto.gov. Comments may also be submitted by postal mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Susy Tsang-Foster, Legal Advisor, Office of Patent Legal Administration.

Comments on the proposed examination guidelines should be sent by electronic mail message over the Internet addressed to: fitf_guidance@uspto.gov. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Mary C. Till, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

Comments on the notice of proposed rulemaking and the proposed examination guidelines may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be

submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Office of the Commissioner for Patents, currently located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Janet Gongola, Patent Reform Coordinator, by telephone at (571) 272–8734, or by electronic mail message at *janet.gongola@uspto.gov.*

SUPPLEMENTARY INFORMATION: The AIA was enacted into law on September 16, 2011. Public Law 112–29, 125 Stat. 284 (2011). Section 3 of the AIA amends the patent laws to: (1) Convert the United States patent system from a ''first to invent'' system to a ''first inventor to file'' system; (2) eliminate the requirement that a prior public use or sale activity be ''in this country'' to be a prior art activity; (3) treat U.S. patents and U.S. patent application publications as prior art as of their earliest effective filing date, regardless of whether the earliest effective filing date is based upon an application filed in the U.S. or in another country; and (4) treat commonly owned patents and patent application publications, or those resulting from a joint research agreement, as being by the same inventive entity for purposes of 35 U.S.C. 102 and 103. The changes in section 3 of the AIA take effect on March 16, 2013.

The USPTO published a notice of proposed rulemaking and notice of proposed examination guidelines on July 26, 2012, to implement the first-inventor-to-file provisions of the AIA. *See Changes to Implement the First Inventor to File Provisions of the Leahy-Smith America Invents Act,* 77 FR 43742 (July 26, 2012), and *Examination Guidelines for Implementing the First-Inventor-to-File Provisions of the Leahy-Smith America Invents Act,* 77 FR 43759 (July 26, 2012). The notice of proposed rulemaking proposes changes to the rules of practice in title 37 of the Code of Federal Regulations (CFR) for consistency with, and to address the examination issues raised by, the changes in section 3 of the AIA. The proposed examination guidelines set out the Office's interpretation of 35 U.S.C. 102 and 103 as amended by the AIA, and advise the public and the Patent Examining Corps on how the changes to 35 U.S.C. 102 and 103 in the AIA impact the provisions of the *Manual of Patent Examining Procedure* (MPEP) pertaining to 35 U.S.C. 102 and 103.

As a part of the implementation of the AIA, the USPTO is conducting a roundtable at the USPTO to obtain public input from organizations and individuals on issues relating to the USPTO's implementation of the first-inventor-to-file provisions of the AIA. The USPTO plans to invite participants from patent user groups, practitioners, industry, independent inventor organizations, academia, and government to provide input. The roundtable likewise is open to any member of the public to provide input. The USPTO will provide an agenda prior to the roundtable in order to focus the discussion and enhance the efficiency of the proceedings. The agenda will be posted on the USPTO's Internet Web site at *www.uspto.gov/AmericaInventsAct.* The USPTO plans to make the roundtable available via Web cast. Web cast information will be available before the roundtable on the USPTO's Internet Web site at *www.uspto.gov/AmericaInventsAct.*

Dated: August 3, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–20239 Filed 8–15–12; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities; Proposed Collection, Comment Request: Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping: Book-out Agreement Confirmation

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. The Commission recently adopted a final rule and interpretations, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), requiring that oral book-out agreements must be followed in a commercially reasonable timeframe by a confirmation in some type of written or electronic form. This notice solicits comments on the recordkeeping requirement that is embedded in the final interpretation's reporting requirement.

DATES: Comments must be submitted on or before October 15, 2012.

ADDRESSES: You may submit comments, regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, by any of the following methods:

- Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Comments may also be submitted by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.*

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

FOR FURTHER INFORMATION CONTACT: Julian E. Hammar, Assistant General Counsel, at 202–418–5118, *jhammar@cftc.gov;* Lee Ann Duffy, Assistant General Counsel, at 202–418–6763, *lduffy@cftc.gov;* or David E. Aron, Counsel, at 202–418–6621, *daron@cftc.gov,* Office of General Counsel, Commodity Futures Trading

[1] *See* 17 CFR 145.9.

Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. 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 control number. To comply with this requirement, the CFTC is publishing the notice of the proposed collection of information listed below.

Abstract: In accordance with section 712(a)(8), section 712(d)(1), sections 712(d)(2)(B) and (C), sections 721(b) and (c), and section 761(b) of the Dodd-Frank Act, on July 10, 2012, the Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (collectively, ''Commissions''), in consultation with the Board of Governors of the Federal Reserve System (''Board''), jointly adopted new rules and interpretations under the Commodity Exchange Act (''CEA'') and the Securities Exchange Act of 1934 (''Exchange Act'') to further define the terms ''swap,'' ''security-based swap,'' and ''security-based swap agreement'' (collectively, ''Product Definitions''); regarding ''mixed swaps;'' and governing books and records with respect to ''security-based swap agreements'' (collectively, ''Adopting Release'').[2]

In the Adopting Release, the CFTC clarified that its ''Brent Interpretation'' regarding book-outs developed in connection with the forward exclusion from futures applies to the forward exclusion from the swap definition as well. As noted in the Adopting Release, the issue of book-outs first arose in 1990 in the CFTC's Brent Interpretation. Citing to the Brent Interpretation's description of book-outs, the Adopting Release stated:

> It is noteworthy that while such [book-out] agreements may extinguish a party's delivery obligation, they are separate, individually negotiated, new agreements, there is no obligation or arrangement to enter into such agreements, they are not provided for by the terms of the contracts as initially entered into, and any party that is in a position in a distribution chain that provides for the opportunity to book-out with another party or parties in the chain is nevertheless entitled to require delivery of the commodity to be made through it, as required under the contracts.[3]

In response to a comment to the proposed rule, the interpretation included in the Adopting Release clarified that an oral book-out agreement must be followed in a commercially reasonable timeframe by a confirmation in some type of written or electronic form. If a party to a contract elects to enter into such a book-out agreement, the collection of information would be mandatory to qualify for the Brent Interpretation Safe Harbor. If the Commission obtains information required to be kept through this collection, it would protect proprietary information in accordance with the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, Section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.''[4] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

Burden Statement: The respondent burden for this collection is estimated to be 10 minutes per response. This estimate includes the time to prepare the written or electronic confirmation to an oral book-out agreement. The Commission estimates the average burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN HOURS

17 CFR	Annual number of respondents	Frequency of response per respondent	Hours per response and cost	Total annual responses	Total hours cost
17 CFR Part 1	30,000	On occasion, 1–2 annually.	10 minutes per response (.166 hour), at $16.60 per response.[5]	45,000, (average of 1–2 annually for a total of 30,000–60,000 annually).	7,470 (average of 5,000–10,000 total hours annually;[6] $747,000, based on $100/hour.[7]

Respondents/Affected Entities: 30,000.

Estimated average number of responses: 45,000 [1–2 annually for a total of 30,000–60,000 annually]

Estimated total average annual burden on respondents: 7,470 [5,000–10,000] hours.

[2] 77 FR 48207, August 13, 2012 (''Product Definitions'').

[3] Statutory Interpretation Concerning Forward Transactions, 55 FR 39188, 39192 Sept. 25, 1990, (''Brent Interpretation'').

[4] 7 U.S.C. 12(a)(1).

[5] Cost per response: .166 × $100, Average: 1.5 × .166 × $100. The Commission estimates that entities will spend $100 per hour. The $100 per hour estimate was used as the average hourly wage rate in the PRA section of the Internal Business Conduct Standards for Swap Dealers and Major Swap Participants final rule (*See* 77 FR 20128, 20194) and the wage rate for Chief Compliance Officers under the Derivatives Clearing Organization final rules (*See* 76 FR 69344, 69428). As the Commission explained in the Internal Business Conduct Standards final rule, the estimate of $100 per hour was based on recent Bureau of Labor Statistics findings, including the mean hourly wage of an employee under occupation code 23–1011, ''Lawyers,'' that is employed by the ''Securities and Commodity Contracts Intermediation and Brokerage Industry,'' which is $82.22. The mean hourly wage of an employee under occupation code 11–3031, ''Financial Manager,'' in the same industry is $74.41. Additionally, SIFMA's ''Report on Management & Professional Earnings in the Securities Industry—2010'' estimates the average wage of a compliance attorney and a compliance staffer in the U.S. at only $46.31 per hour. As in those rules, the Commission is using a $100 per hour wage rate in calculating the cost burdens imposed by this collection of information and requests comment on the accuracy of its estimate.

[6] Total number of hours arrived by multiplying the average number of responses, [(30,000 + 60,000)/2] × .166 minutes = 7,470 hours.

[7] 7,470 hours × $100 per hour = $747,000.

Frequency of collection: Occasionally, 1–2 annually.

Average total cost: $747,000.

There are no capital costs or operating and maintenance costs associated with this collection. The Commission believes that, as part of customary and usual business practices, most respondents already create and store book-out agreements in either a written or electronic format.

The Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Dated: August 13, 2012.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–20123 Filed 8–15–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–38]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–38 with attached transmittal, and policy justification.

Dated: August 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 31 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-38, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $35 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 12–38

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* United Arab Emirates (UAE)

(ii) *Total Estimated Value:*

Major Defense Equipment*	$35 million
Other	$0 million
Total	$35 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 2 spare F117–PW–100 engines in support of the UAE C–17 GLOBEMASTER III aircraft.

(iv) *Military Department:* Air Force (QAC Amendment 2)

(v) *Prior Related Cases, if any:* FMS case QAC-$285M–20Jan11

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 31 July 2012

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates—F117–PW–100 Engines

The Government of the United Arab Emirates (UAE) has requested a proposed sale of 2 spare F117–PW–100

engines in support of the UAE C–17 GLOBEMASTER III aircraft. The estimated cost is $35 million.

The proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will improve the UAE's readiness and capability to meet current and future strategic airlift requirements. The UAE will use its C–17s to provide humanitarian aid in the Middle East and Africa region and to support its troops in coalition operations. The C–17 will provide a heavy airlift capability and complement day-to-day operations of the UAE's existing C–130H fleet.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Pratt and Whitney in East Hartford, Connecticut. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the UAE.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2012–20163 Filed 8–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–52]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–52 with attached transmittal, and policy justification.

Dated: August 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 3 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended we are forwarding a new Transmittal No. 12-52, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Belgium for defense articles and services. On 2 August 2012 we notified this sale with an estimated value of $88 million. Subsequently, we discovered some administrative errors in Transmittal No. 12-41. The enclosed Transmittal No. 12-52 supersedes Transmittal No. 12-41. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 12–52

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Belgium

(ii) *Total Estimated Value:*

Major Defense Equipment*	$70 million
Other	$18 million
TOTAL	$88 million

(iii) (*Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 240 Block I Javelin Missiles, 60 Command Launch Units (CLU), Missile Simulation Rounds (MSR), Battery Coolant Units (BCU), support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support.

(iv) *Military Department:* Army (WDM)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 3 Aug 2012

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Government of Belgium—Javelin Missiles

The Government of Belgium has requested a possible purchase of 240 Block I Javelin Missiles, 60 Command Launch Units (CLU) Missile Simulation Rounds (MSR), Battery Coolant Units

(BCU), support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support. The estimated cost is $88 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a NATO ally who continues to be an important force for the political stability and economic progress in Northern Europe.

The Belgium Army intends to use the Javelin system as part of its overall military modernization program. The Javelin system will replace the Belgian Army's existing MILAN missile system.

The proposed sale of the missiles and support will not alter the basic military balance in the region.

The principal contractors will be Joint Javelin Venture (JJV), a consortium of Raytheon, in Tucson, Arizona and Lockheed Martin, in Orlando, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require 6 U.S. Government or contractor representatives to travel to Belgium for a period of 2 weeks for equipment training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–52

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Javelin Weapon System's hardware and the documentation provided are unclassified. However, sensitive technology is contained within the system itself. The sensitivity is primarily in the software programs that instruct the system how to operate in the presence of countermeasures. Programs are contained in the system in the form of microprocessors with Read Only Memory (ROM) maps, which do not provide the software program itself. The overall hardware is considered sensitive in that the modulation frequency and infrared wavelengths could be used in countermeasure development. The benefits to be derived from the sale, as outlined in the policy justification of this notification, outweigh the potential damage that could result if technology were to be revealed to unauthorized persons.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–20157 Filed 8–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–33]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–33 with attached transmittal, and policy justification.

Dated: August 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 31 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-33, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Republic of Brazil for defense articles and services estimated to cost $233 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 12–33

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Brazil

(ii) *Total Estimated Value:*

Major Defense Equipment*	$ 98 million
Other	$135 million
Total	$233 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 26 Assault Amphibious Vehicles (AAVs)/ Reliability, Availability and Maintainability/Rebuild to Standard (RAM/RS), with ancillary equipment, and machine guns. Also included are the upgrade of Brazil's existing AAVs to the RAM/RS configuration, weapons and ammunition, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (LDG, LDH)

(v) *Prior Related Cases:*

FMS case SBX—$35M—2Dec91

FMS case SBY—$5M—19Jun92

(vi) *Sales Commission, Fee, etc., Paid, Offered or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 31 Jul 2012

POLICY JUSTIFICATION

Brazil—Assault Amphibious Vehicles

The Government of Brazil has requested the possible sale of 26 Assault Amphibious Vehicles (AAVs)/ Reliability, Availability and Maintainability/Rebuild to Standard (RAM/RS), with ancillary equipment, and machine guns. Also included are the upgrade of Brazil's existing AAVs to the RAM/RS configuration, weapons and ammunition, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is $233 million.

The proposed sale will contribute to foreign policies and national security of the United States by helping to improve the security of Brazil which has been, and continues to be, an important force for political stability and economic progress in South America.

Brazil will use this equipment to augment its current inventory of amphibious vehicles and to modernize and strengthen its Naval operational amphibious capability in support of national defense objectives. Brazil will have no difficulty absorbing these vehicles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The AAVs will be procured through a competitive procurement. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Brazil. There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2012–20168 Filed 8–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–41]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–41 with attached transmittal, and policy justification.

Dated: August 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Transmittal No. 12–41

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Belgium

(ii) *Total Estimated Value:*

Major Defense Equipment*	$48 million
Other	$40 million
TOTAL	$88 million

(iii) (*Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 240 Block I Javelin Missiles, Command Launch Units (CLU) Missile Simulation Rounds (MSR), Battery Coolant Units (BCU), support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support.

(iv) *Military Department:* Army (WDM)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 2 Aug 2012

* as defined in Section 47(6) of the Arms Export Control Act.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 2 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-41, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Belgium for defense articles and services estimated to cost $88 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Policy Justification

Government of Belgium—Javelin Missiles

The Government of Belgium has requested a possible purchase of 240 Block I Javelin Missiles, Command Launch Units (CLU), Missile Simulation Rounds (MSR), Battery Coolant Units (BCU), support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support. The estimated cost is $88 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a NATO ally who continues to be an important force for the political stability and economic progress in Northern Europe.

The Belgium Army intends to use the Javelin system as part of its overall military modernization program. The Javelin system will replace the Belgium Army's existing MILAN missile system.

The proposed sale of the missiles and support will not alter the basic military balance in the region.

The principal contractors will be Joint Javelin Venture (JJV), a consortium of Raytheon, in Tucson, Arizona, and Lockheed Martin, in Orlando, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require 6 U.S. Government or

contractor representatives to travel to Belgium for a period of 2 weeks for equipment training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–41

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Javelin Weapon System's hardware and the documentation provided are unclassified. However, sensitive technology is contained within the system itself. The sensitivity is primarily in the software programs that instruct the system how to operate in the presence of countermeasures. Programs are contained in the system in the form of microprocessors with Read Only Memory (ROM) maps, which do not provide the software program itself. The overall hardware is considered sensitive in that the modulation frequency and infrared wavelengths could be used in countermeasure development. The benefits to be derived from the sale, as outlined in the policy justification of this notification, outweigh the potential damage that could result if technology were to be revealed to unauthorized persons.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–20161 Filed 8–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of Department of Defense Federal Advisory Committee

AGENCY: DoD.

ACTION: Establishment of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix) and 41 Code of Federal Regulations § 102–3.50(d), the Secretary of Defense, on October 11, 2010, established the Army National Cemeteries Advisory Commission. This discretionary advisory committee was chartered to provide independent advice and recommendations on matters relating to the Army National Cemeteries Program. On December 31, 2011, Public Law 112–81 § 4723, National Defense Authorization Act for Fiscal Year 2012, directed the Department of Defense to create an ''advisory committee on Arlington National Cemetery,'' to advise the Department ''with respect to the administration of Arlington National Cemetery, the erection of memorials at the cemetery, and master planning for the cemetery.''

Based upon this the Department disestablished the Army National Cemeteries Advisory Commission and established the Advisory Committee on Arlington National Cemetery. Like the former Commission, the new Committee's charter authorizes the Secretary of Defense to appoint up to nine members who are preeminent authorities in their respective fields of interest or expertise.

The Committee is a non-discretionary federal advisory committee that shall provide the Secretary of Defense through the Secretary of the Army, independent advice and recommendations, with respect to the administration of Arlington National Cemetery, the erection of memorials at the cemetery, and master planning for the cemetery.

The Committee shall report to the Secretary of Defense through the Secretary of the Army. The Secretary of the Army may act upon the Committee's advice and recommendations. The Committee shall be comprised of no more than nine members who are preeminent authorities in their respective fields of interest or expertise, including:

a. One member nominated by the Secretary of Veterans Affairs;

b. One member nominated by the Secretary of the American Battle Monuments Commission; and

c. No more than 7 members nominated by the Secretary of the Army.

Committee members, who are not full-time or permanent part-time Federal officers or employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. § 3109 and shall serve as special government employees. All Committee members shall be appointed by the Secretary of Defense and their appointments shall be renewed on an annual basis.

The Secretary of the Army shall designate the Co-Chairs from the total Committee membership. With the exception of travel and per diem for official Committee related travel, Committee members shall serve without compensation.

The Secretary of Defense may approve the appointment of Committee members for one- to four-year terms of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees.

Each Committee member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary, and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees to support the Committee. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense or the Committee's sponsor. Such subcommittees shall not work independently of the chartered Committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Committee; nor can any subcommittee or its members update or report directly to the DoD or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Committee members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Committee member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years. Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official Committee related travel, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act, governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee

Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Committee shall meet at the call of the Committee's Designated Federal Officer, in consultation with Committee's Chairpersons. The estimated number of Committee meetings is four per year.

In addition, the Designated Federal Officer is required to be in attendance at all Committee and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, a properly approved Alternate Designated Federal Officer shall attend the entire duration of the Committee or subcommittee meeting.

The Designated Federal Officer, or the Alternate Designated Federal Officer, shall call all of the Committee's and subcommittees' meetings; prepare and approve all meeting agendas; adjourn any meeting when the Designated Federal Officer, or the Alternate Designated Federal Officer, determines adjournment to be in the public interest or required by governing regulations or DoD policies/procedures; and chair meetings when directed to do so by the official to whom the Committee reports.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Advisory Committee on Arlington National Cemetery membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Advisory Committee on Arlington National Cemetery.

All written statements shall be submitted to the Designated Federal Officer for the Advisory Committee on Arlington National Cemetery, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Advisory Committee on Arlington National Cemetery'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 Advisory Committee on Arlington National Cemetery. 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: August 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–20154 Filed 8–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Notice of Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The topic of the meeting on September 11–12, 2012 is to review new start research and development projects requesting Strategic Environmental Research and Development Program funds in excess of $1 million. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: Tuesday, September 11, 2012 from 8:30 a.m. to 4:30 p.m. and Wednesday, September 12 from 8:30 a.m. to 3:45 p.m.

ADDRESSES: George Mason Conference Room at Metro Offices, 4601 North Fairfax Drive, Suite 1200, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Bunger, SERDP Office, 4800 Mark Center Drive, Suite 17D08 Alexandria, VA 22350–3600, by telephone at (571) 372–6384.

Dated: August 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–20150 Filed 8–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Acquisition University Board of Visitors; Notice of Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Meeting notice.

SUMMARY: 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 following Federal advisory committee meeting of the Defense Acquisition University Board of Visitors will take place.

DATES: Wednesday, September 12, 2012, from 8:30 a.m. to 1 p.m.

ADDRESSES: DAU Headquarters, 9820 Belvoir Road, Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Christen Goulding, Protocol Director, DAU, Phone: 703–805–5134, Fax: 703–805–5940, Email: *christen.goulding@dau.mil*.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of this meeting is to report back to the Board of Visitors on continuing items of interest. *Agenda:*

8:30 a.m. Welcome and approval of minutes.

8:45 a.m. DAU Capital and Northeast Region Highlights.

9:30 a.m. Integrated Learning Environment/Student Information System.

10:45 a.m. FY13 DAU Budget.

11:30 a.m. Recognition of Service.

11:45 a.m. Open Forum Discussion.

1 p.m. Adjourn.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Christen Goulding at 703–805–5134.Committee's Designated Federal Officer or Point of Contact: Ms. Kelley Berta, 703–805–5412.

Dated: August 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–20155 Filed 8–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Members Meeting

AGENCY: Under Secretary of Defense Personnel and Readiness, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose

of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

DATES: September 6, 2012, from 12 p.m. to 5 p.m.

ADDRESSES: Defense Language and National Security Education Office, 1101 Wilson Boulevard, Suite 1210, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Ms. Alison Patz, Program Analyst, Defense Language and National Security Education Office (DLNSEO), 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *Alison.patz@wso.whs.mil.*

SUPPLEMENTARY INFORMATION: The National Security Education Board Members meeting is open to the public. The public is afforded the opportunity to submit written statements associated with DLNSEO.

Dated: August 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–20152 Filed 8–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Office of the Secretary of Defense (OSD), DoD.

ACTION: Notice of board membership.

SUMMARY: This notice announces the appointment of the Department of Defense, Fourth Estate, Performance Review Board (PRB) members, to include the Joint Staff, Defense Field Activities, the U.S. Court of Appeals for the Armed Forces and the following Defense Agencies: Defense Advance Research Projects Agency, Defense Commissary Agency, Defense Contract Audit Agency, Defense Contract Management Agency, Defense Finance And Accounting Service, Defense Information Systems Agency, Defense Legal Services Agency, Defense Logistics Agency, Defense Security Cooperation Agency, Defense Threat Reduction Agency, Missile Defense Agency, and Pentagon Force Protection Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB shall provide fair and impartial review of Senior Executive Service and Senior Professional performance appraisals and make recommendations regarding performance ratings and performance awards to the Deputy Secretary of Defense.

DATES: *Effective Date:* August 2, 2012.

FOR FURTHER INFORMATION CONTACT: Michael L. Watson, Assistant Director for Executive and Political Personnel, Washington Headquarters Services, Office of the Secretary of Defense, (703) 693–8373.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense PRB with specific PRB panel assignments being made from this group. Executives listed will serve a one-year renewable term, effective August 2, 2012.

Office of the Secretary of Defense,

Chairperson,

Alan Shaffer.

PRB PANEL MEMBERS

Anthony Aldwell
Linda Allen
Gretchen Anderson
Timothy Baker
David Bennett
Pamela Conklin
Kathy Cutler
Laura Desimone
Shari Durand
Audrey Eckhart
Webster Ewell
John Hastings
Paul Hulley
John James, Jr.
Clarence Johnson
Kevin Kelly
Paul Koffsky
Paul Kozemchak
Roberta Lowe
Nathan Maenle
Richard Mccormick
Elizabeth Mcgrath
Teresa Mckay
Donald Mckenzie
Allen Middleton
Robert Newberry
Patrick O'brien
Thomas Peters
Ronald Pontius
Angela Rogers
James Russell
Dennis Savage
Richard Sayre
Steven Schleien
Donna Seymour
David Wennergren
Joseph-Paul Wilusz

Dated: August 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–20153 Filed 8–15–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Office of Postsecondary Education; Secretary's Recognition of Accrediting Agencies

SUMMARY: The information collected is required to determine if an accrediting agency complies with the Secretary of Education's Criteria for Recognition and is used to allow the Secretary to make determinations on extending and/or continuing recognition.

DATES: Interested persons are invited to submit comments on or before October 15, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04910. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the

information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Title 34 CFR 602: Secretary's Recognition of Accrediting Agencies.

OMB Control Number: 1840–0788.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 167.

Total Estimated Number of Annual Burden Hours: 4,885.

Abstract: In compliance with Title 34 CFR part 602, the information collected consists of petitions, reports and accreditation notifications. The information collected is required to determine if an accrediting agency complies with the Secretary of Education's Criteria for Recognition and is used to allow the Secretary to make determinations on extending and/or continuing recognition. Only postsecondary institutions accredited by such a recognized accrediting agency obtain Title IV funding for its students. This portion of the new regulation was disclosed but not submitted for public comment when the negotiated rulemaking legislature was originally announced in the **Federal Register** in 2009. Therefore, this submission is considered a ''revision of a currently approved collection.''

Dated: August 9, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–20151 Filed 8–15–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Equity and Excellence Commission

AGENCY: Office for Civil Rights, U.S. Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Equity and Excellence Commission (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

DATES: August 30, 2012.

Time: 11:00 a.m. to 4:00 p.m. Eastern Standard Time.

ADDRESSES: The Commission will meet in Washington, DC at the United States Department of Education at 400 Maryland Avenue SW., Washington, DC 20202, in Room 4E333.

FOR FURTHER INFORMATION CONTACT: Guy Johnson, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Email: *equitycommission@ed.gov*. Telephone: (202) 453–6567.

SUPPLEMENTARY INFORMATION: On August 30, 2012 from 11:00 a.m. to 4:00 p.m. Eastern Standard Time, the Equity and Excellence Commission will hold an open meeting in Washington, DC at the United States Department of Education at 400 Maryland Avenue SW., Washington, DC 20202, in Room 4E333.

The purpose of the Commission is to collect information, analyze issues, and obtain broad public input regarding how the Federal government can increase educational opportunity by improving school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

The agenda for the Commission's August 30, 2012 meeting will include review and deliberation of materials prepared by the writing teams for consideration in the draft report to the Secretary of the U.S. Department of Education (Secretary), summarizing the Commission's findings and recommendations for appropriate ways in which Federal policies can improve equity in school finance. The Commission is also expected to discuss the timing and content of future Commission meetings, as well as what further materials, if any, will be produced by the topic review teams. Due to time constraints, there will not be a public comment period. However, individuals wishing to provide written comments may send their comments to the Commission via email at *equitycommission@ed.gov* or via U.S. mail to Guy Johnson, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. For comments related to the upcoming meeting, please submit comments for receipt no later than August 23, 2012.

Individuals interested in attending the meeting must register in advance, as meeting room seating may be limited. Please contact Guy Johnson at (202) 453–6567 or by email at *equitycommission@ed.gov*. Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or materials in alternative format) should notify Guy Johnson at (202) 453–6567 no later than August 23, 2012. We will attempt to meet requests for accommodations after this date but cannot guarantee availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the Department of Education, 400 Maryland Avenue SW., Washington, DC 20202 between the hours of 9 a.m. to 5 p.m. Eastern Standard Time. You may contact Guy Johnson, Designated Federal Official, Equity and Excellence Commission, at *equitycommission@ed.gov,* or at (202) 453–6567 if you have additional questions regarding inspection of records.

John DiPaolo,

Chief of Staff, Office for Civil Rights, United States Department of Education.

[FR Doc. 2012–20156 Filed 8–15–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of Renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App. 2, and Section 102–3.65(a), Title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Electricity Advisory

Committee's (EAC) charter has been renewed for a two-year period beginning on August 9, 2012.

The Committee will provide advice and recommendations to the Assistant Secretary for Electricity Delivery and Energy Reliability on programs to modernize the Nation's electric power system.

Additionally, the renewal of the EAC has been determined to be essential to conduct Department of Energy business, and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: David Meyer, Designated Federal Officer at (202) 586–3118.

Issued at Washington DC on August 9, 2012.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2012–20120 Filed 8–15–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 12, 2012, 4:00 p.m.

ADDRESSES: Atomic Testing Museum, 755 E. Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 630–0522; Fax (702) 295–5300 or Email: *NSSAB@nv.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Fiscal Year 2013 Work Plan Development.
2. Election of Officers.

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Barbara Ulmer at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Barbara Ulmer at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Barbara Ulmer at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC, on August 13, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–20121 Filed 8–15–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 12, 2012, 6:00 p.m.

ADDRESSES: Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation: Cleanup Status at the Oak Ridge National Laboratory
- Additions/Approval of Agenda
- Motions/Approval of June Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on August 13, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–20124 Filed 8–15–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–022]

Decision and Order Granting a Waiver to Sanyo From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF–022) that grants Sanyo E&E Corporation (Sanyo) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for determining the energy consumption of residential refrigerator-freezers for the basic models set forth in its petition for waiver. Under today's decision and order, Sanyo shall be required to test and rate its hybrid wine chiller/beverage center basic models using an alternate test procedure that requires Sanyo to test the wine chiller compartment at 55 °F instead of the prescribed temperature of 38 °F.

DATES: This Decision and Order is effective August 16, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371, Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0103, (202) 586–7796, Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Sanyo a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures found in 10 CFR part 430, subpart B, appendix A1 for certain basic models of hybrid wine chiller/beverage center, provided that Sanyo tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Sanyo from making representations concerning the energy efficiency of these products unless the product has been tested in a manner consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on August 9, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Sanyo E&E Corporation (Case No. RF–022).

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. Sanyo's Petition for Waiver: Assertions and Determinations

On June 2, 2011, Sanyo submitted a petition for waiver and application for interim waiver (petition) from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, subpart B, appendix A1. In its petition, Sanyo seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR Part 430 for Sanyo's hybrid models that consist of single-cabinet units with a refrigerated beverage compartment in the top portion and a wine storage compartment in the bottom of the units. DOE issued guidance that clarified the test procedures to be used for hybrid products such as the Sanyo models at issue here: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/refrigerator_definition_faq.pdf.* This guidance specifies that basic models such as the ones Sanyo identifies in its petition, which do not have a separate wine storage compartment with a separate exterior door, are to be tested according to the DOE test procedure in Appendix A1, with the temperatures specified therein.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

Sanyo asserts that the wine storage compartment cannot be tested at the prescribed temperature of 38 °F, because the minimum compartment temperature is 45 °F. Sanyo submitted an alternate test procedure to account for the energy consumption of its wine chiller/beverage centers. That alternate procedure would test the wine chiller compartment at 55 °F, instead of the prescribed 38 °F. To justify the use of this standardized temperature for testing, Sanyo stated in its petition that it designed these models to provide an average temperature of 55 to 57 °F, which it determined is a commonly recommended temperature for wine storage, suggesting that this temperature is presumed to be representative of expected consumer use. 77 FR 19656. DOE notes that the test procedures for wine chillers adopted by the Association of Home Appliance Manufacturers (AHAM), California Energy Commission (CEC), and Natural Resources Canada all use a standardized compartment temperature of 55 °F for wine chiller compartments, which is consistent with Sanyo's approach.

III. Conclusion

After careful consideration of all the material that was submitted by Sanyo, it is ordered that:

(1) The petition for waiver submitted by the Sanyo E&E Corporation (Case No. RF–022) is hereby granted as set forth in the paragraphs below.

(2) Sanyo shall be required to test and rate the following Sanyo models according to the alternate test procedure set forth in paragraph (3) below.

JUB248LB
JUB248RB
JUB248LW
JUB248RW
KBCO24LS
KBCS24LS
KBCO24RS
KBCS24RS
MBCM24FW

(3) Sanyo shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, Appendix A1, except that, for the Sanyo products listed in paragraph (2) only, test the wine chiller compartment at 55 °F, instead of the prescribed 38 °F.

(4) Representations. Sanyo may make representations about the energy use of its hybrid wine chiller/beverage center products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in Sanyo's June 2, 2011 petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on August 9, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–20125 Filed 8–15–12; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (3064–0152)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before October 15, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collection of information:

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 4546.

Estimated Time per Response: 16 hours.

Estimated Total Annual Burden: 72,736 hours.

General Description of the Collection: 12 CFR 334.82, 334.90, 334.91 and Appendix J to Part 334 implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law 108–159 (2003). Section 114 amended section 615 of the Fair Credit Reporting Act (FCRA) to require the OCC, FRB, FDIC, OTS, NCUA, and FTC (Agencies) to issue jointly (i) Guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers; (ii) regulations requiring each financial institution and creditor to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to account holders or customers or to the safety and soundness of the institution or creditor; and (iii) regulations generally requiring credit and debit card issuers to assess the validity of change of address requests under certain circumstances. Section 315 amended section 605 of the FCRA to require the Agencies to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA). The information collections in Sec. 334.90 require each financial institution and creditor that offers or maintains one or more covered accounts to develop and implement a written Identity Theft Prevention Program

(Program). In developing the Program, financial institutions and creditors are required to consider the guidelines in Appendix J to Part 334 and include those that are appropriate. The initial Program must be approved by the board of directors or an appropriate committee thereof and the board, an appropriate committee thereof or a designated employee at the level of senior management must be involved in the oversight of the Program. In addition, staff must be trained to carry out the Program. Pursuant to Sec. 334.91, each credit and debit card issuer is required to establish and implement policies and procedures to assess the validity of a change of address request under certain circumstances. Before issuing an additional or replacement card, the card issuer must notify the cardholder or use another means to assess the validity of the change of address. The information collections in Sec. 41.82 require each user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it requested the report when the user receives a notice of address discrepancy from a CRA. A user of consumer reports must also develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed to be accurate to the CRA from which it receives a notice of address discrepancy when (1) The user can form a reasonable belief that the consumer report relates to the consumer about whom the user has requested the report; (2) the user establishes a continuing relationship with the consumer; and (3) the user regularly and in the ordinary course of business furnishes information to the CRA from which it received the notice of address discrepancy.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 13th day of August 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–20137 Filed 8–15–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

American Logistic Group, Inc. (NVO & OFF), 14710 South Maple Avenue, Gardena, CA 90248, Officers: Yung K. Choi, Secretary (Qualifying Individual), Sang W. Ha, President, Application Type: New NVO & OFF License.

Auto Export Shipping, Inc. dba A.E.S. Inc. (NVO), One Slater Drive, Elizabeth, NJ 07206, Officers: Thomas O'Rourke, Assistant Secretary (Qualifying Individual), T. Michael Riggs, Director, Application Type: QI Change.

AZ Freight International Inc. (NVO & OFF), 18311 Railroad Street, City of Industry, CA 91748, Officer: Lang Zhang, President (Qualifying Individual), Application Type: New NVO & OFF License.

Cargo One, Inc. (NVO), 970 West 190th Street, Suite 580, Torrance, CA 90502, Officers: Yoji Kurita, President (Qualifying Individual), Turo Toda, Managing Director, Application Type: Transfer to NTL Naigai Trans Line (USA) Inc. dba NTL Cargo One.

CJ Services International Corp. (NVO), 10257 NW 52nd Terrace, Doral, FL 33178, Officers: Carla L. Imach, President (Qualifying Individual), Alexis J. Artman, Vice President, Application Type: New NVO License.

Federal Forwarding Company (OFF), 1701 Florida Avenue NW., Washington, DC 20009, Officers: Lawrence DePace, President (Qualifying Individual), Robert D. Van Roijen, Owner, Application Type: Add Trade Name Secor Group Global Logistics.

Global Shipping Partners, LLC (NVO), 437 Perrie Drive, #202, Elk Grove Village, IL 60007, Officer: Jason P. Kwon, Member (Qualifying Individual), Application Type: New NVO License.

Global Supply Chain Solutions Inc. (NVO & OFF), 2301 W. 205th Street, Unit 113, Torrance, CA 90501, Officers: Tony Shin, Vice President (Qualifying Individual), Anthony Lau, Director, Application Type: New NVO & OFF License.

I.T.N. Consolidators, Inc. (NVO), 3401–C NW. 72nd Avenue, Miami, FL 33122, Officers: Juan A. Garcia, Vice President (Qualifying Individual), John R. Nash, CFO, Application Type: Add Trade Name International Transportation Network & QI Change.

I.T.N. of Miami, Inc. (NVO), 3401–C NW. 72nd Avenue, Miami, FL 33122, Officers: Juan A. Garcia, Vice President (Qualifying Individual), John R. Nash, CFO, Application Type: QI Change.

Seagull Maritime Agencies Private Limited (NVO), F–35/3, Okhla Industrial Area, Phase II, New Delhi-110020, India, Officers: Siddharth Khera, Vice President (Qualifying Individual), Sidhartha C. Jena, President, Application Type: QI Change.

Service Galopando Corp. (NVO), 3190 South State Road 7, Bay 5, Miramar, FL 33023, Officers: Candido Montero, President (Qualifying Individual), Jorge A. Montero, Vice President, Application Type: New NVO License.

TOC Logistics International, LLC (NVO & OFF), 2629 Waterfront Parkway East Drive, #380, Indianapolis, IN 46214, Officers: Gary Cardenas, CEO (Qualifying Individual), Craig Roeder, Board of Members, Application Type: QI Change.

UPS Ocean Freight Services, Inc. (NVO), 12380 Morris Road, Alpharetta, GA 30005, Officers: Steven S. McMichael, Assistant Secretary (Qualifying Individual), Kurt Keuhn, Treasurer, Application Type: QI Change.

UPS Supply Chain Solutions, Inc. (OFF), 12380 Morris Road, Alpharetta, GA 30005, Officers: Steven S. McMichael, Assistant Secretary (Qualifying Individual), Dan Brutto, President, Application Type: QI Change.

USCOM Logistics, Inc. (NVO & OFF), 1420 Francisco Street, Torrance, CA 90501, Officers: Seo B. Ha, Vice President (Qualifying Individual),

Chung J. Park, President, Application Type: QI Change.

Your Connexion, Inc. (NVO & OFF), 13280 SW 131 Street, #108, Miami, FL 33186, Officers: Mauricio R. Valencia, President (Qualifying Individual), Mauricio J. Valencia, Secretary, Application Type: New NVO & OFF License.

Dated: August 10, 2012.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–20080 Filed 8–15–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary license has been reissued pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 023327N.

Name: G & F West Indies Shipping, Inc.

Address: 1416 Blue Hill Avenue, Boston, MA 02125.

Date Reissued: June 26, 2012.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–20079 Filed 8–15–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 009931N.

Name: Westwind Transportation Services, Inc. dba Westwind Container Line.

Address: 1225 West 190th Street, Suite 300, Gardena, CA 90248.

Date Revoked: July 16, 2012.

Reason: Failed to maintain a valid bond.

License No.: 022365F.

Name: IVI Freight Systems Inc.

Address: 9112 NW 120th Terrace, Hialeah Gardens, FL 33018.

Date Revoked: July 28, 2012.

Reason: Failed to maintain a valid bond.

License No.: 022773F.

Name: WLI (USA) Inc.

Address: 175–01 Rockaway Blvd., Suite 228, Jamaica, NY 11434.

Date Revoked: July 15, 2012.

Reason: Failed to maintain a valid bond.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–20081 Filed 8–15–12; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

DATES: *Date and Time:* The meeting will be held on October 15, 2012, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (Rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/Advisory Committees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Cindy Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2528, Silver Spring, MD 20993–0002, 301–796–9001, FAX 301–847–8533, email: *GIDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. 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. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/Advisory Committees/Calendar/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will provide advice and recommendations to the Agency on the need for and design of clinical development programs necessary to support approval of parenteral lipid emulsion products as nutritional support.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

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 September 28, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 20, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 21, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee

meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Cindy Hong at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 10, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20103 Filed 8–15–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

DATES: *Date and Time:* The meeting will be held on October 18, 2012, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (Rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Paul Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., WO31–2417, Silver Spring, MD 20993–0002, (301) 796–9001, Fax: (301) 847–8533, email: *EMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. 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. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 203568, mipomersen injection, by Genzyme Corporation. The proposed indication (use) is as an adjunct to maximally tolerated lipid-lowering medications and diet to reduce low-density lipoprotein (LDL) cholesterol, apolipoprotein B, total cholesterol, non-high density lipoprotein-cholesterol and lipoprotein (a) in patients with homozygous familial hypercholesterolemia.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

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 2, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 24, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 25, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 10, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20104 Filed 8–15–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Endpoints for Clinical Trials in Kidney Transplantation; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop to discuss the endpoints for clinical trials of drugs and therapeutic biologics in kidney transplantation. This public workshop is intended to provide information and gain perspective from health care providers, academia, and industry on the role of various clinical, laboratory, histologic, genomic/proteomic, safety, and other endpoints

used to evaluate patient and allograft outcome in clinical trials of kidney transplantation. The meeting will include a discussion of measure of patient and graft survival, evaluation of the allograft by histology and biomarkers, glomerular filtration rate or other measures of renal function, evaluation of safety, and other topics. The input from this public workshop will help in developing topics for further discussion and may serve to inform recommendations on potential endpoints in clinical trials of kidney transplantation.

Date and Time: The public workshop will be held on September 10, 2012, from 9 a.m. to 6 p.m., and on September 11, 2012, from 8 a.m. to 3 p.m.

Location: The public workshop will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Ave., Silver Spring, MD 20910, 301–589–0800. Seating is limited and available only on a first-come, first-served basis.

CONTACT PERSON FOR MORE INFORMATION: Christine Moser or Ramou Mauer, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6209, Silver Spring, MD 20993–0002, 301–796–1300 or 301–796–1600.

Registration: Registration is free for the public workshop. Interested parties are encouraged to register early because space is limited. Seating will be available on a first-come, first-served basis. To register electronically, email registration information (including name, title, firm name, address, telephone, and fax number) to *endpoints@fda.hhs.gov.* Persons without access to the Internet can call Christine Moser, 301–796–1300, or Ramou Mauer, 301–796–1600, to register.

Persons needing a sign language interpreter or other special accommodations should notify Christine Moser or Ramou Mauer (see **CONTACT PERSON FOR MORE INFORMATION**) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop regarding potential clinical or surrogate endpoints and biomarkers for clinical trials of drugs and therapeutic biologics in kidney transplantation. This public workshop will include scientific discussion on the following topics:

- Patient and graft survival;
- Allograft rejection, both cellular and antibody-mediated, injury, and recurrent disease;
- Glomerular filtration rate, proteinuria, and other measures of renal function;
- Proteomic, genomic, and immunologic biomarkers;
- Measures of safety, including cardiovascular and metabolic outcomes;
- Medication adherence; and
- Consideration of composite endpoints.

The Agency encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. Transcripts will also be available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm305308.htm* approximately 45 days after the workshop.

Dated: August 10, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20105 Filed 8–15–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Food and Drug Administration Clinical Trial Requirements, Compliance, and Good Clinical Practice; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), Baltimore District Office, in cosponsorship with the Society of Clinical Research Associates (SoCRA), is announcing a public workshop. The public workshop on FDA's clinical trial requirements is designed to aid the clinical research professional's understanding of the mission, responsibilities, and authority of the FDA and to facilitate interaction with FDA representatives. The program will focus on the relationships among FDA and clinical trial staff, investigators, and institutional review boards (IRB). Individual FDA representatives will discuss the informed consent process and informed consent documents; regulation, relating to drugs, devices, and biologics; as well as inspections of clinical investigators, of IRB, and research sponsors.

Date and Time: The public workshop will be held on November 14 and 15, 2012, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Radisson Plaza Lord Baltimore Hotel, 20 West Baltimore St., Baltimore, MD 21201, 410–539–8400. Attendees are responsible for their own accommodations. Please mention SoCRA to receive the hotel room rate of $129.00 plus applicable taxes (available until October 13, 2012, or until the SoCRA room block is filled).

Contact: Cynthia A. Harris, Food and Drug Administration, 6000 Metro Dr., Suite 101, Baltimore, MD 21215, 410–779–5133, FAX: 410–779–5705; or Society of Clinical Research Associates (SoCRA), 530 West Butler Ave., Suite 109, Chalfont, PA 18914, 800–762–7292 or 215–822–8644; Fax: 215–822–8633, email: *SoCRAmail@aol.com,* Web site: *http://www.socra.org.*

Registration: The registration fee will cover actual expenses including refreshments, lunch, materials, and speaker expenses. Seats are limited; please submit your registration as soon as possible. Workshop space will be filled in order of receipt of registration. Those accepted into the public workshop will receive confirmation. The cost of the registration is as follows:

COST OF REGISTRATION

SoCRA member	$575.00.
SoCRA nonmember (includes membership).	$650.00.
Federal Government SoCRA member.	$525.00.
Federal Government SoCRA nonmember.	$450.00.
FDA Employee	Fee Waived.

If you need special accommodations due to a disability, please contact SoCRA or Cynthia Harris (see *Contact*) at least 21 days in advance.

Extended periods of question and answer and discussion have been included in the program schedule. SoCRA designates this education activity for a maximum of 13.3 Continuing Education (CE) Credits for SoCRA CE and continuing nurse education (CNE). SoCRA designates this educational activity for a maximum of 13.3 American Medical Association Physician's Recognition Award Category 1 Credit(s)™. Physicians should claim only the credit commensurate with the extent of their participation. SoCRA is

accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians. SoCRA is an approved provider of CNE by the Pennsylvania State Nurses Association (PSNA), an accredited approver by the American Nurses Credentialing Center's Commission on Accreditation (ANCC). ANCC/PSNA Provider Reference Number: 205–3–1–09.

Registration Instructions: To register, please submit a registration form with your name, affiliation, mailing address, telephone, fax number, and email, along with a check or money order payable to ''SoCRA''. Mail to: SoCRA (see *Contact* for address). To register via the Internet, go to *http://socra.org/html/FDA_Conference.htm*. (FDA has verified the Web site addresses throughout this document, but we are not responsible for any subsequent changes to the Web sites after this document is published in the **Federal Register**.)

Payment by major credit card is accepted (Visa/MasterCard/AMEX only). For more information on the meeting registration, or for questions on the public workshop, contact SoCRA (see *Contact*).

SUPPLEMENTARY INFORMATION: The public workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The public workshop will provide those engaged in FDA-regulated (human) clinical trials with information on a number of topics concerning FDA requirements related to informed consent, clinical investigation requirements, IRB inspections, electronic record requirements, and investigator initiated research. Topics for discussion include the following: (1) Are We There Yet?; (2) What FDA Expects in a Pharmaceutical Clinical Trial; (3) Medical Device Aspects of Clinical Research; (4) Adverse Event Reporting—Science, Regulation, Error, and Safety; (5) Working With FDA's Center for Biologics Evaluation and Research; (6) Ethical Issues in Subject Enrollment; (7) Keeping Informed and Working Together; (8) FDA Conduct of Clinical Investigator Inspections; (9) Investigator Initiated Research; (10) Meetings with FDA—Why, When, and How; (11) Part 11 Compliance—Electronic Signatures; (12) IRB Regulations and FDA Inspections; (13) Informed Consent Regulations; and (14) The Inspection Is Over—What Happens Next? Possible FDA Compliance Actions.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The public workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The public workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) as outreach activities by Government Agencies to small businesses.

Dated: August 8, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–19851 Filed 8–15–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Food and Drug Administration Clinical Trial Requirements, Compliance, and Good Clinical Practice; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Dallas District Office, in co-sponsorship with the Society of Clinical Research Associates (SoCRA) is announcing a public workshop. The public workshop on FDA's clinical trial requirements is designed to aid the clinical research professional's understanding of the mission, responsibilities, and authority of FDA and to facilitate interaction with FDA representatives. The program will focus on the relationships among FDA and clinical trial staff, investigators, and institutional review boards (IRBs). Individual FDA representatives will discuss the informed consent process and informed consent documents; regulations relating to drugs, devices, and biologics; as well as inspections of clinical investigators, IRBs, and research sponsors.

Date and Time: The public workshop will be held on March 6 and 7, 2013, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Sheraton Dallas Hotel, 400 North Olive St., Dallas, TX 75201, 214–922–8000.

Attendees are responsible for their own accommodations. Please mention SoCRA to receive the hotel room rate of $145 plus applicable taxes (available until February 3, 2013, or until the SoCRA room block is filled).

Contact: David Arvelo, Office of Regulatory Affairs, Food and Drug Administration, Southwest Regional Office, 4040 North Central Expressway, Suite 900, Dallas, TX 75204, 214–253–4952, Fax: 214–253–4970, email: *david.arvelo@fda.hhs.gov* or SoCRA, 530 West Butler Ave., Suite 109, Chalfont, PA 18914, 800–762–7292, FAX: 215–822–8633, email: *SoCRAmail@aol.com,* Web site: *http://www.SoCRA.org*.

Registration: The registration fee covers the cost of actual expenses, including refreshments, lunch, materials, and speaker expenses. Seats are limited; please submit your registration as soon as possible. Workshop space will be filled in order of receipt of registration. Those accepted into the workshop will receive confirmation. The cost of registration is as follows:

SoCRA member, $575.00
SoCRA nonmember (includes membership), $650.00
Federal Government SoCRA member, $450.00
Federal Government SoCRA nonmember, $525.00
FDA Employee, Fee Waived

If you need special accommodations due to a disability, please contact SoCRA (see *Contact*) at least 21 days in advance.

Extended periods of question and answer and discussion have been included in the program schedule. SoCRA designates this educational activity for a maximum of 13.3 Continuing Education (CE) credits for SoCRA CE and Nurse continuing nursing education (CNE). SoCRA designates this educational activity for a maximum of 13.3 American Medical Association Physicians Recognition Award Category 1 Credit(s)™. Physicians should claim credit commensurate with the extent of their participation. SoCRA is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians. SoCRA is an approved provider of CNE by the Pennsylvania State Nurses Association (PSNA), an accredited approver by the American Nurses Credentialing Center's Commission on Accreditation (ANCC). ANCC/PSNA Provider Reference Number: 205–3–A–09.

Registration Instructions: To register, please submit a registration form with your name, affiliation, mailing address, phone, fax number, and email, along

with a check or money order payable to ''SoCRA''. Mail to: SoCRA (see *Contact* for address). To register via the Internet, go to *http://www.socra.org/html/FDA_Conference.htm*. (FDA has verified the Web site address, but we are not responsible for any subsequent changes to the Web site after this document is published in the **Federal Register**.)

Payment by major credit card is accepted (Visa/MasterCard/AMEX only). For more information on the meeting registration, or for questions on the workshop, contact SoCRA (see *Contact*).

SUPPLEMENTARY INFORMATION: The public conference helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The workshop will provide those engaged in FDA-regulated (human) clinical trials with information on a number of topics concerning FDA requirements related to informed consent, clinical investigation requirements, IRB inspections, electronic record requirements, and investigator initiated research. Topics for discussion include the following: (1) What FDA Expects in a Pharmaceutical Clinical Trial; (2) Adverse Event Reporting—Science, Regulation, Error, and Safety; (3) Part 11 Compliance—Electronic Signatures; (4) Informed Consent Regulations; (5) IRB Regulations and FDA Inspections; (6) Keeping Informed and Working Together; (7) FDA Conduct of Clinical Investigator Inspections; (8) Meetings With FDA: Why, When, and How; (9) Investigator Initiated Research; (10) Medical Device Aspects of Clinical Research; (11) Working With FDA's Center for Biologics Evaluation and Research; (12) The Inspection Is Over—What Happens Next? Possible FDA Compliance Actions; (13) Ethical Issues in Subject Enrollment; (14) Medical Device Aspects of Clinical Research; and (15) Are We There Yet? An Overview of the FDA Good Clinical Practice Program.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The public workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The public workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) as outreach activities by Government Agencies to small businesses.

Dated: August 8, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–19852 Filed 8–15–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Issues in the Design of Clinical Trials of Antibacterial Drugs for the Treatment of Non-Cystic Fibrosis Bronchiectasis; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop focusing on the design of clinical trials of antibacterial drugs for the treatment of non-cystic fibrosis (non-CF) bronchiectasis. This public workshop is intended to provide information for, and gain perspective from, health care providers, patients and patient advocacy organizations, academia, and industry on various aspects of the design of clinical trials. The input from this public workshop will useful in developing topics for further discussion.

Date and Time: The public workshop will be held on September 7, 2012, from 8 a.m. to 3:30 p.m.

Location: The public workshop will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Ave., Silver Spring, MD 20910. The hotel's phone number is 301–589–0800. Seating is limited and available on a first-come, first-served basis.

CONTACT PERSON FOR MORE INFORMATION: Christine Moser or Lori Benner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6204, Silver Spring, MD 20993–0002, 301–796–1300.

Registration: Registration is free for the public workshop. Interested parties are encouraged to register early. Seating will be available on a first-come, first-served basis. To register electronically, email your registration information (including name, title, firm name, address, telephone, and fax number) to *bronchiectasisworkshop@fda.hhs.gov.* Those without access to the Internet may call 301–796–1300 to register. Persons needing a sign language interpreter or other special accommodations should notify Christine Moser or Lori Benner (see **CONTACT PERSON FOR MORE INFORMATION**) at least 7 days in advance.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM after submission of a Freedom of Information request. Written requests should be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. Transcripts will also be available on the Internet (*http://www.fda.gov/Drugs/NewsEvents/ucm305463.htm*) approximately 45 days after the workshop.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop focusing on scientific considerations in the design of clinical trials of antibacterial agents for the treatment of non-CF bronchiectasis. Discussions will focus on natural history; patient populations for enrollment in clinical trials; current standard of care and unmet need; clinical trial endpoints, including exacerbation and patient-reported outcomes; and clinical trial design elements, including duration of treatment and patient followup.

FDA encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

Dated: August 10, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20106 Filed 8–15–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Grants for Behavioral Research in Cancer Control.

Date: September 18–19, 2012..

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division Of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329, 301–496–7987, *lovingeg@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI REVIEW of P50 and R01 applications in Lung, Skin, Ovarian, Pancreatic and Gastrointestinal Cancers.

Date: September 19–20, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Caron A Lyman, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8119, Bethesda, MD 20892–8328, 301–451–4761, *lymanc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE II.

Date: September 19–20, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Wlodek Lopaczynski, MD, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd. Room 8131, Bethesda, MD 20892, 301–594–1402, *lopacw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Emerging Technologies in Biospecimen Science.

Date: October 24, 2012.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Donald L Coppock, Ph.D., Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH 6116 Executive Blvd., Room 7151 Bethesda, MD 20892 301–451–9385 *donald.coppock@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Core Infrastructure and Methodological Research for Cancer Epidemiology Cohorts.

Date: October 31, 2012.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health 6120 Executive Blvd. Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D. Scientific Review Officer, Special Review Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892–8329, 301–496–7576, *bielatk@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 13, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20159 Filed 8–15–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biodata Analysis and Biosystems Modeling.

Date: September 12, 2012.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kee Hyang Pyon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, *pyonkh2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurobiology of Integrative Brain Functions.

Date: September 17, 2012.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting)

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181 MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov.*

(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: August 13, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20158 Filed 8–15–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities: Consideration of Deferred Action for Childhood Arrivals, Form I–821D, New Information Collection; Emergency Submission to the Office of Management and Budget; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), submitted the following emergency information collection request, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in

accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35). The purpose of this notice is to allow 30 days for public comments. Comments are encouraged and will be accepted until September 17, 2012. This process is conducted in accordance with 5 CFR 1320.10 and 5 CFR 1320.13.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the Office of Information and Regulatory Affairs, OMB, USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at USCISFRComment@dhs.gov or via the Federal eRulemaking Portal at *www.Regulations.gov* under e-Docket ID number USCIS–2012–0012, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at oira_submission@omb.eop.gov. All submissions received must include the agency name and e-Docket ID. When submitting comments by email please make sure to add ''Request for Deferred Action for Childhood Arrivals, 1615–NEW'' in the subject box.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.Regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments for public viewing that it determines may impact the privacy of an individual or is offensive. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.Regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Consideration of Deferred Action for Childhood Arrivals.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–821D, USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected on this form is used by USCIS to determine eligibility of certain individuals who were brought to the United States as children and meet the following guidelines to be considered for deferred action for childhood arrivals:

1. Were under the age of 31 as of June 15, 2012;

2. Came to the United States before reaching their 16th birthday;

3. Have continuously resided in the United States since June 15, 2007, up to the present time;

4. Were present in the United States on June 15, 2012, and at the time of making their request for consideration of deferred action with USCIS;

5. Entered without inspection before June 15, 2012, or their lawful immigration status expired as of June 15, 2012;

6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and

7. Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

These individuals will be considered for relief from removal from the United States or from being placed into removal proceedings as part of the deferred action for childhood arrivals process. Those who submit requests with USCIS and demonstrate that they meet the threshold guidelines may have removal action in their case deferred for a period of two years, subject to renewal (if not terminated), based on an individualized, case by case assessment of the individual's equities. Only those individuals who can demonstrate, through verifiable documentation, that they meet the threshold guidelines will be considered for deferred action for childhood arrivals, except in exceptional circumstances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,041,300 responses at 2 hours and 45 minutes (2.75 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,863,575 annual burden hours.

If you need a copy of the information collection instrument, or additional information, please visit the Federal eRulemaking Portal at *http://www.Regulations.gov.* We may also be contacted at USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, telephone number 202–272–1740.

Dated: August 14, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–20247 Filed 8–14–12; 4:15 pm]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control No. 1615–0040]

Agency Information Collection Activities: Application for Employment Authorization, Form I–765, Revision of a Currently Approved Information Collection; Emergency Submission to the Office of Management and Budget; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Application for Employment Authorization.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), submitted the following emergency information collection request, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35). The purpose of this notice is to allow 30 days for public comments. Comments are encouraged and will be accepted for 30 days until September 17, 2012. This process is conducted in accordance with 5 CFR 1320.10 and 5 CFR 1320.13.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the Office of Information and Regulatory Affairs, OMB, USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at USCISFRComment@dhs.gov or via the Federal eRulemaking Portal at *www.Regulations.gov* under e-Docket ID number USCIS–2005–0035, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov.* All submissions received must include the agency name and e-Docket ID. When submitting comments by email please make sure to add OMB Control No. 1615–0040 in the subject box.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.Regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments for public viewing that it determines may impact the privacy of an individual or is offensive. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.Regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of the currently approved information collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–765, USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected on this form is used by USCIS to determine eligibility for the issuance of the employment authorization document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,761,300 responses related to Form I–765 at 3.42 hours per response; 1,385,292 responses related to Biometrics at 1.17 hours; 1,047,357 responses related to Form I–765WS at .50 hours; and 1,761,300 responses related to Passport-Style Photographs at .50 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 9,048,767 annual burden hours.

If you need a copy of the information collection instrument, please visit the Federal eRulemaking Portal at *http://www.Regulations.gov.*

We may also be contacted at USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529, telephone number 202–272–1470.

Dated: August 14, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–20251 Filed 8–14–12; 4:15 pm]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2012–N203; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before September 17, 2012.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Hahn Laboratory, University of Pennsylvania School of Medicine, Philadelphia, PA; PRT–77720A

The applicant requests a permit to import chimpanzee (*Pan troglodytes*) biological samples from Congo for the purpose of enhancement to the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Kansas O Bar Ranch LLC, Woodward, OK; PRT–79771A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Kansas O Bar Ranch LLC, Woodward, OK; PRT–79770A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Rancho Milagro, San Diego, TX; PRT–80160A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Rancho Milagro, San Diego, TX; PRT–80158A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Kyle Lange, Mertzon, TX; PRT–80202A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Kyle Lange, Mertzon, TX; PRT–80201A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Paul Dickson, Shreveport, LA; PRT–80109A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for Cabot's tragopan (*Tragopan caboti*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Marc Cramer, San Jose, CA; PRT–81021A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for spotted pond turtle (*Geoclemys hamiltonii*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Nancy Speed, Benton, MS; PRT–793116

The applicant requests renewal of their captive-bred wildlife registration

under 50 CFR 17.21(g) for the Cuban Amazon (*Amazona leucocephala*), vinaceous Amazon (*Amazona vinacea*), and golden parakeet (*Aratinga guarouba*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Karl Mogensen, Natural Bridge, VA; PRT–33472A

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include the family Bovidae, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Robert Scott, Ocotillo, CA; PRT–128506

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the Galapagos tortoise (*Chelonoidis nigra*) and radiated tortoise (*Astrochelys radiate*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Paul Bodnar, Cuyahoga Falls, OH; PRT–030006

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species:
- African dwarf crocodile (*Osteolaemus tetraspis*)
- Chinese alligator (*Alligator sinensis*)
- Cuban crocodile (*Crocodylus rhombifer*)
- Siamese crocodile (*Crocodylus siamensis*)
- Morelet's crocodile (*Crocodylus moreletii*)
- False gavial (*Tomistoma schlegelii*)
- Yacare (*Caiman yacare*)
- Galapagos tortoise (*Chelonoidis nigra*)
- Radiated tortoise (*Astrochelys radiata*)
- Indian python (*Python molurus molurus*)

Applicant: Fort Wayne Zoological Society, Fort Wayne, IN; PRT–671564

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genus, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
- Cebidae
- Cercopithecidae
- Felidae (does not include jaguar, margay or ocelot)
- Hominidae
- Lemuridae
- Macropodidae
- Ciconiidae (does not include wood stork)
- Psittacidae (does not include thick-billed parrot)
- Spheniscidae
- Sturnidae (does not include Aplonis pelzelni)
- Testudinidae
- Varanidae

Species:
- African wild dog (*Lycaon pictus*)

Applicant: Joseph Patinio, Mililani, HI; PRT–80510A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the Galapagos Tortoise (*Chelonoidis nigra*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Alexandria Rosati, Cambridge, MA; PRT–72061A

The applicant requests a permit to collect saliva for hormonal analyses, from common chimpanzee (*Pan troglodytes*) from 151 animals, wild and captive-bred for the purpose of enhancement of the survival of the species and scientific research. This notification covers activities to be conducted by the applicant over a 3-month period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Don Dahlgren, Oklahoma City, OK; PRT–80165A

Applicant: Silas Blanton, Glen St. Mary, FL; PRT–81166A

Applicant: Jon Lee, Missoula, MT; PRT–80535A

Applicant: Richard Haskins, Hillsborough, CA; PRT–80923A

Applicant: David Kjelstrup, Underwood, ND; PRT–81313A

Applicant: Billy Elbert, Klamath Falls, OR; PRT–81986A

Applicant: Steven Sullivan, Oklahoma City, OK; PRT–80043A

Applicant: Michelle Crawford, Sugarland, TX; PRT–81167A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–20176 Filed 8–15–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as an Addition to and Becoming a Part of the Laguna Reservation for the Pueblo of Laguna, NM

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 8,353.0683 acres, more or less, as an addition to and becoming a part of the Pueblo of Laguna Indian Reservation for the Pueblo of Laguna, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, MS–4639–MIB, 1849 C Street NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the land described below. The land was proclaimed to be the Pueblo of Laguna Indian Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Pueblo of Laguna Indian Reservation

Cibola County, New Mexico

Those certain parcels of land known as Parcels I and II, more particularly described below. Said parcels contain a combined total area of 8,353.0683 acres, more or less.

Parcel I

(**Note:** The following corrective legal description corrects and supersedes the legal description shown on Sheet 1 of 9 of the Boundary Survey Plat entitled ''BOUNDARY SURVEY PLAT, CEBOLLETA RANCH, LTD., CO.,

WITHIN THE CEBOLLETA GRANT, CIBOLA COUNTY, NEW MEXICO, DECEMBER 1999'', certified on December 2, 1999, by Garry P. Hugg, New Mexico Professional Surveyor No. 5823, and filed in the office of the County Clerk of Cibola County, New Mexico on April 11, 2008, in Book 018, Pages 02063–02071, as Document No. 200800960.) That certain parcel of land situated within the Cebolleta Grant in projected Sections 2, 3, 10, 11, 14, 15 and 23, Township 11 North, Range 6 West and projected Sections 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 34 and 35, Township 12 North, Range 6 West, New Mexico Principal Meridian, Cibola County, New Mexico, and being that certain parcel of land described in Warranty Deed from John C. Dilts, Jr., Trustee of the John C. Dilts, Jr. Inter Vivos Trust and Two Rivers Ranch to Cebolleta Ranch LTD. Co., filed in the office of the County Clerk of Cibola County, New Mexico, on July 16, 1999, in Book 8, page 4223, more particularly described by survey performed by Garry P. Hugg, New Mexico Professional Surveyor Number 5823, using the New Mexico State Plane Coordinate System, West Zone (NAD83), grid bearings and ground distances as follows:

BEGINNING at the Southeast corner of the parcel herein described (a 5/8″ rebar and aluminum cap stamped LS 5823), whence the seven and one half (7-1/2) mile marker on the South Boundary of said Cebolleta Grant (a correctly marked BLM Brass Cap Monument found in place) bears S 00°13′40″ E, 750.00 feet distant; Thence, N 45°58′19″ W, 2519.16 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, N 00°52′55″ W, 3356.28 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, N 60°54′00″ W, 2113.33 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, N 00°43′26″ E, 2145.65 feet to a point (a 3-1/2″ brass cap stamped Elder Company Property Corner mounted on a 1″ iron pipe found in place); Thence, S 75°19′09″ W, 374.11 feet to a point (a 3-1/2″ brass cap stamped Elder Company Property Corner mounted on a 1″ iron pipe found in place); Thence, N 48°05′38″ W, 1097.13 feet to a point (a 3-1/2″ brass cap stamped Elder Company Property Corner mounted on a 1″ iron pipe found in place); Thence, N 31°32′48″ E, 504.07 feet to a point (a 3-1/2″ brass cap stamped Elder Company Property Corner mounted on a 1″ iron pipe found in place); Thence, N 17°35′10″ W, 1306.39 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, N 90°00′00″ W, 3519.20 feet to the Southwest corner of the parcel herein described (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, N 00°11′55″ W, 12252.21 feet to a point (a 2″ iron pipe found in place and tagged with a brass disc stamped LS 5823); Thence, N 00°10′57″ W, 2636.39 feet to (a 1″ iron pipe found in place and tagged with a brass disc stamped LS 5823); Thence, N 00°14′48″ W, 2638.21 feet to a point (a 2″ iron pipe found in place and tagged with a brass disc stamped LS 5823); Thence, N 01°15′25″ W, 4954.11 feet to a point (a 1″ iron pipe found in place and tagged with a brass disc stamped LS 5823); Thence, S 89°37′41″ W, 5281.60 feet to a point (a 1″ iron pipe found in place and tagged with a brass disc stamped LS 5823), having the following ties (as shown on the Boundary Survey Plat certified on July 7, 2010, by Russ P. Hugg, New Mexico Professional Surveyor No. 9750, and filed in the office of the County Clerk of Cibola County, New Mexico, on July 9, 2010, in Book 020, Page 00535, as Document No. 201001558): Whence (1) the U.S. Geological Survey Control Monument ''BALTA'' bears S 46°25′48″ E, 4491.90 feet distant and (2) the seven (7) mile marker on the south boundary of the Cebolleta Grant (a correctly marked BLM Brass Cap Monument found in place) bears S 18°44′36″ E, 35,664.57 feet distant; Thence, N 00°19′33″ W, 4484.14 feet to the Northwest corner of the parcel herein described (a 1″ iron pipe found in place and tagged with an aluminum washer stamped LS 11808); Thence, N 89°48′22″ E, 5281.61 feet to a point (a 60d Spike and cap stamped ''L.S. 9750'' set in the south face of a 24″ ponderosa pine tree, as shown on the above-described Boundary Survey Plat certified on July 7, 2010, by Russ P. Hugg, New Mexico Professional Surveyor No. 9750); Thence, N 89°48′22″ E, 8057.93 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 1593 found in place); Thence, N 89°40′16″ E, 1319.80 feet to a point (a 5/8″ rebar found in place and tagged with a brass disc stamped LS 5823); Thence, N 89°41′08″ E, 3283.15 feet to the Northeast corner of the parcel herein described (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, S 18°19′27″ E, 1007.36 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, S 16°16′13″ E, 222.14 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, S 16°46′35″ E, 859.75 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, S 26°30′43″ E, 739.83 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, S 12°33′02″ E, 175.17 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, S 05°33′43″ W, 564.83 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, S 25°36′54″ W, 403.89 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, S 42°33′07″ E, 1369.34 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set in a found stone cairn); Thence, S 20°11′08″ E, 1775.40 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set in a found stone cairn); Thence, S 07°00′59″ W, 1340.02 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set in a found stone cairn); Thence, S 25°43′58″ W, 1330.94 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set in a found stone cairn); Thence, S 30°46′49″ E, 2130.83 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 9750 set in a found stone cairn); Thence, S 02°49′01″ E, 1973.71 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set in a found stone cairn); Thence, S 27°21′05″ W, 921.95 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set in a found stone cairn); Thence, S 89°45′46″ W, 6375.32 feet to a point (a 5/8″ rebar and aluminum cap stamped LS 5823 set); Thence, S 00°13′31″ E, 1800.75 feet to a point (a 5/8″ rebar and aluminum cap stamped ''Koogle & Pouls Engineering WL 5'' found in place); Thence, S 00°13′31″ E, 10400.27 feet to a point (a 5/8″ rebar and aluminum cap stamped ''Koogle & Pouls Engineering WL 3'' found in place); Thence, S 00°13′40″ E, 11788.83 feet to the Southeast corner and point of beginning of the parcel herein described.

Said Parcel I contains an area of 8,270.5090 acres, more or less.

Parcel II

(**Note:** The following corrective legal description corrects and supersedes the legal description shown on Sheet 1 of 4 of the A.L.T.A./A.C.S.M. Land Title Survey Plat entitled ''A.L.T.A./A.C.S.M. LAND TITLE SURVEY, LANDS OF SILVER DOLLAR RANCH, L.L.C., SITUATED WITHIN THE CEBOLLETTA GRANT IN PROJECTED SECTIONS 10 AND 15, TOWNSHIP 11 NORTH, RANGE 6 WEST, NEW MEXICO PRINCIPAL MERIDIAN, CIBOLA COUNTY, NEW MEXICO, APRIL 2008'', certified on April 7, 2008, by Russ P. Hugg, New Mexico Professional Surveyor No. 9750, and filed in the office of the County Clerk of Cibola County, New Mexico, on April 11, 2008,

in Book 018, Pages 02059–02062, as Document No. 200800959.)

That certain parcel of land situated within the Cebolleta Grant in projected Sections 10 and 15, Township 11 North, Range 6 West, New Mexico Principal Meridian, Cibola County, New Mexico, and being that certain parcel of land described in Quit Claim Deed from Cebolleta Ranch Ltd. Co. to Silver Dollar Ranch, LLC, filed in the office of the County Clerk of Cibola County, New Mexico, on August 2, 2005, in Book 0014, Page 9122, more particularly described by survey performed by Russ P. Hugg, New Mexico Professional Surveyor Number 9750, using the New Mexico State Plane Coordinate System, West Zone (NAD83), grid bearings and ground distances as follows:

BEGINNING at the Southwest corner of the parcel herein described (a 3½″ brass cap stamped Elder Company Property Corner mounted on a 1″ iron pipe found in place), whence (1) the six (6) mile marker on the South Boundary of said Cebolleta Grant (a correctly marked BLM Brass Cap Monument found in place) bears S 15°19′20″ W, 5589.46 feet distant, (2) the seven (7) mile marker on said south boundary of the Cebolleta Grant (a correctly marked BLM Brass Cap Monument found in place) bears S 34°32′35″ E, 6567.42 feet distant and (3) Angle Point No. 5 on the North line of Tract 37 (a correctly marked BLM Brass Cap Monument found in place) bears N 33°09′41″ W, 2795.69 feet distant; Thence, N 17°50′59″ E, 4457.95 feet to the Northwest corner of the parcel herein described (a 3½″ brass cap stamped Elder Company Property Corner mounted on a 1″ iron pipe found in place), a point on the Westerly boundary of the Cebolleta Ranch being that certain parcel of land described in Warranty Deed from John C. Dilts, Jr., Trustee of the John C. Dilts, Jr., Inter Vivos Trust and Two Rivers Ranch to Cebolleta Ranch LTD., Co., filed in the office of the County Clerk of Cibola County, New Mexico, on July 16, 1999, in Book 8, page 4223; Thence, S 48°05′38″ E, 1097.13 feet along said Westerly boundary of the Cebolleta Ranch to the Northeast corner of the parcel herein described (a 3½″ brass cap stamped Elder Company Property Corner mounted on a 1″ iron pipe found in place); Thence, S 22°45′37″ W, 4163.53 feet to the Southeast corner of the parcel herein described (a 3½″ brass cap stamped Elder Company Property Corner mounted on a 1″ iron pipe found in place); Thence, N 60°07′19″ W, 659.92 feet to the Southwest corner and point of beginning of the parcel herein described.

Said Parcel II contains an area of 82.5593 acres, more or less.

The above-described Parcels I and II contain a combined total area of 8,353.0683 acres, more or less, together with all rights and easements appurtenant thereto, and all water rights, whether appurtenant or not, for their associated purposes of use whether for irrigation, ranching, stock, game, wildlife, domestic, commercial, recreation or other purposes, and from all sources whether surface water, groundwater, or springs, whether permitted or unpermitted, and including all claims for water rights, subject to restrictions, reservations, and easements of record insofar as the same are in force and applicable.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: July 20, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012–20145 Filed 8–15–12; 8:45 am]

BILLING CODE 4310–W7–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Availability of the Final Environmental Assessment and Finding of No Significant Impact for Environmental Assessment for Non-native Plant Control and Re-establishment of Riparian Habitats Along the Rio Grande in Seldon Canyon, Doña Ana County, NM

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Availability of the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the United States Section, Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the United States Section hereby gives notice that the Final Environmental Assessment and Finding of No Significant Impact for Non-native Plant Control and Re-establishment of Riparian Habitats Along the Rio Grande on U.S. International Boundary and Water Commission and Bureau of Land Management Lands are available. A notice of finding of no significant impact dated January 24, 2012, provided a thirty (30) day comment period before making the finding final. The Notice was published in the **Federal Register** on January 24, 2012 (**Federal Register** Notice, Vol. 77, No. 15, Page 3497).

FOR FURTHER INFORMATION CONTACT: Gilbert Anaya, Division Chief, Environmental Management Division; United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4702, email: *Gilbert.Anaya@ibwc.gov*.

BACKGROUND: This proposed project will be part of a regional initiative to restore the form and function of the Rio Grande floodplain that has been undertaken by other Federal, State, and non government organizations. The overarching goals of the project are to improve the ecosystem integrity within the project area by shifting conditions to match those that historically existed. This project will focus on restoring 31.35 acres divided between two tracts of federal lands (25.85 ac USIBWC and 5.5 ac BLM) from saltcedar to native riparian habitats by utilizing validated mechanical and chemical control methods to remove and control saltcedar.

Availability: Electronic copies of the Final EA and FONSI are available from the USIBWC Web site at: *http://www.ibwc.gov/Organization/Environmental/reports_studies.html*.

Dated: August 3, 2012.

Steven Fitten,

General Counsel.

U.S. INTERNATIONAL BOUNDARY AND WATER COMMISSION EL PASO FIELD OFFICE TEXAS

FINDING OF NO SIGNIFICANT IMPACT

NON-NATIVE PLANT CONTROL AND RE-ESTABLISHMENT OF RIPARIAN HABITATS ALONG THE RIO GRANDE

LEAD AGENCY

United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC).

PROPOSED ACTION

The United States Section, International Boundary and Water Commission (USIBWC) proposes to remove the non-native salt cedar (Tamarix chinensis) on a 25.85 acre parcel of USIBWC land along the Rio Grande in Selden Canyon.

The proposed action will include mechanical removal of salt cedar and follow-up treatments using herbicide.

Two alternatives were discussed in an environmental assessment made available to the public during the formal public review period initiated on January 19, 2012:

1. Mechanical Removal of salt cedar with follow-up herbicide treatments, prescribed burning of debris and native plant restoration. (Preferred Alternative).
2. No Action would be taken to control non-native salt cedar and no restoration of native plant species would occur.

PUBLIC INVOLVEMENT

On January 19, 2012 the Draft Environmental Assessment for removing salt cedar on the IBWC tract known as Broad Canyon Arroyo was released for public review by the USIBWC. Notice of this document was published in the **Federal Register** and made available on the USIBWC Web site: *www.ibwc.gov/Organization/Environmental/EIS_EA_Public_Comment.html*.

An electronic copy of the draft EA was also made available through the San Andres NWR Web site at: *http://www.fws.gov/southwest/refuges/newmex/sanandres/index.html*.

Public review of the draft EA was completed following a 30 day review period.

SUMMARY OF FINDINGS

Pursuant to National Environmental Policy Act (NEPA) guidance (40 Code of Federal Regulations 1500–1508), The President's Council on Environmental Quality issued regulations for NEPA implementation which included provisions for both the content and procedural aspects of the required Environmental Assessment (EA) the USIBWC has prepared the draft EA.

A careful review of the draft EA indicates that there will not be a significant impact on the quality of the human environment as a result of this proposal. This determination is based on the following factors:

1. The proposed action will occur in a localized area belonging to the International Boundary and Water Commission and will be of short duration during part of the year. The proposed activities are not national or regional in scope.
2. The proposed action will not significantly affect public health or safety. The methods used are limited in scope, monitored by San Andres National Wildlife Refuge staff and occur in areas with no public access.
3. The proposed action will not significantly impact unique characteristics of the geographic area such as historical or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. The proposed action will impact the abundance of the non-native salt cedar on less than 26 acres.
4. The effects of the proposed action are not considered highly controversial. The use of mechanical extraction and follow-up herbicide treatments as a management tool to reduce an exotic species is accepted among wildlife experts.
5. The possible effects of the proposed action are not highly uncertain and do not involve unique or unknown risks.
6. The proposed action does not establish a precedent for actions with future significant effects or represent a decision in principle about a future consideration.
7. There are no significant cumulative effects identified by the EA. Mechanical extraction of salt cedar will be limited in scope and time, will be coordinated with other management agencies, and will stay within management objectives.
8. The proposed action will not affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, nor will it cause a loss or destruction of significant scientific, cultural, or historic resources. The fieldwork conducted under the proposed action does not constitute an undertaking as defined by the National Historic Preservation Act.
9. The proposed action will fully comply with the Endangered Species Act of 1973, as amended. The proposed action would not affect non-target federally or state listed threatened and endangered species. The proposed action will likely benefit native wildlife populations, particularly neotropical migrant birds by replacing a monotypic stand of non-native salt cedar with a diverse native plant community.
10. The proposed action will result in the irretrievable loss of some individual salt cedar. The proposed action will reduce the amount of salt cedar on a small parcel in an area that is made up of salt cedar along the river for miles in either direction. Impacts to the statewide population of salt cedar are determined to be insignificant.
11. The proposed action will not have any significant adverse effects on wetlands and floodplains, pursuant to Executive Orders 11990 and 11988 because the study area is not located within any wetlands and the amount of floodplain affected is minimal.
12. The proposed action will not threaten a violation of Federal, State, or local law or requirement imposed for the protection of the environment. The proposed action will be conducted consistent with any and all requisite approvals or authorizations of the cooperating agencies.

On the basis of the information contained in the environmental assessment, it is the determination of the USIBWC that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of Section 102 (2) (c) of the National Environmental Policy Act of 1969, as amended. Accordingly, requirements of the National Environmental Policy Act and regulations promulgated by the Council on Environmental Quality are fulfilled and an environmental impact statement is not required.

Edward Drusina
Commissioner
International Boundary and Water Commission, United States Section

Date: August 8, 2012

[FR Doc. 2012–20016 Filed 8–15–12; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–834]

Certain Mobile Electronic Devices Incorporating Haptics; Amendment of the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 7) amending the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International

Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. 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 April 6, 2012, based on a complaint filed by Immersion Corporation of San Jose, California (''Immersion''), alleging a violation of 19 U.S.C. 1337 in the importation, sale for importation, and sale within the United States after importation of certain mobile electronic devices incorporating haptics, by reason of the infringement of claims of six patents, including U.S. Patent Nos. 6,429,846 (''the '846 patent'') and 8,031,181 (''the '181 patent''). 77 FR 20847 (Apr. 6, 2012). The notice of institution named four respondents: Motorola Mobility, Inc. and Motorola Mobility Holdings, Inc., both of Libertyville, Illinois; HTC Corporation of Taoyuan, Taiwan; and HTC America, Inc. of Bellevue, Washington.

On May 21, 2012, Immersion moved for leave to amend its complaint and the notice of investigation to assert claims 1, 3–7, 13–16, 18, 19, and 22 of the '846 patent, based upon a recent certificate of correction issued by the U.S. Patent and Trademark Office for that patent. Immersion also sought leave to assert claim 7 of the '181 patent, which it alleged had been omitted from the notice of investigation because of a typographical error.

On May 31, 2012, the respondents opposed the motion in substantial part. On July 18, 2012, the ALJ issued the subject ID granting Immersion's motion.

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.14 and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.14, 210.42).

Issued: August 13, 2012.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–20129 Filed 8–15–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Extension to Public Comment Period for Consent Decree Lodged Under the Comprehensive Environmental Response, Compensation, and Liability Act

On May 17, 2012, the United States published a notice that a proposed Consent Decree had been lodged with the United States District Court for the District of Massachusetts in *United States* v. *Bayer CropScience Inc. et al.,* Civil Action No. 1:12-cv-10847 and *Commonwealth of Massachusetts* v. *Bayer CropScience Inc. et al.,* Civil Action No. 1:12-cv-10849, related to natural resource damages claims of the United States and the Commonwealth of Massachusetts against Bayer CropScience Inc. and Pharmacia Corporation in connection with the Industri-plex Superfund Site, located in Woburn, Massachusetts. 77 FR 29361. That notice indicated that the Department of Justice would receive comments concerning the settlement for a period of 30 days from the date of the notice. In response to a comment submitted during the intital comment period that requested additional information concerning the settlement and that the comment period be extended, the United States is posting information related to the settlement at the following Web site, *http://www.fws.gov/newengland/*, and is extending the public comment period. The Department of Justice will receive for a period of thirty (30) days from the date of this publication any additional comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Bayer CropScience Inc.,* D.J. Ref. 90–11–2–228/7. Comments may also be submitted by email to *pubcomment-ees.enrd@usdoj.gov.* A copy of the comments should be sent to Donald G. Frankel, Senior Counsel, Environmental Enforcement Section, Department of Justice, Suite 616, One Gateway Center, Newton, MA 02458 (*donald.frankel@usdoj.gov*).

During this extended public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury (if the request is by fax or email, forward a check to the Consent Decree library at the address stated above).

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–20088 Filed 8–15–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *July 30, 2012 through August 3, 2012.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles

produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
81,674	Archer Trim, Inc.	Lumberton, NC	May 31, 2011.
81,751	General Motors Vehicle Manufacturing, Aerotek, Kelly Services, Voith, Shreveport Ramp, Dana Holding, etc.	Shreveport, LA	July 28, 2012.
81,820	PSB Limited, SFN Group, Inc	Rochester, NY	July 11, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
81,558	Healthcare Corporation of America (HCA), HCA Mountain Division, Mountain Star Health, Inc., Off-Site Workers from Utah.	Cottonwood Heights, UT	April 30, 2011.
81,607	Verizon Business Networks, Inc., Service Program Delivery Division.	Ashburn, VA	May 11, 2011.
81,664	Anthem Blue Cross Blue Shield of Maine, WellPoint, Inc., Enterprise Business Services, Aerotek, etc.	South Portland, ME	May 30, 2011.
81,664A	Anthem Blue Cross Blue Shield of New Hampshire, WellPoint, Inc., Enterprise Business Services, Aerotek, etc.	Manchester, NH	May 30, 2011.
81,664B	Anthem Blue Cross Blue Shield of Connecticut, WellPoint, Inc., Enterprise Business Services, Aerotek, etc.	North Haven, CT	May 30, 2011.
81,710	Sun Life Financial (US) Services Company, Inc., Sun Life Financial, Inc., Adecco USA, Inc.	Wellesley Hills, MA	June 7, 2011.
81,711	The Nielsen Company (US), LLC, GBS NA Watch Operations, Audience Measurement, Adecco.	Oldsmar, FL	June 12, 2011.
81,712	Hawker Beechcraft Corporation	Salina, KS	May 4, 2012.
81,755	Thomson Reuters, Finance Operations & Technology Div., Adecco.	Eagan, MN	June 25, 2011.
81,762	SMC Corporation of America, SMC Corporation, Kelly Services.	Tustin, CA	June 20, 2011.
81,773	IdaTech, LLC	Bend, OR	July 2, 2011.
81,776	HCL America, Inc., HCL Technologies Limited, Xerox Corp., V Dart, KRG, Genuent, etc.	Webster, NY	July 3, 2011.
81,780	American Express Travel Related Services Company, Inc., Global Prepaid Servicing—Global Payment Options (GPS), Kelly Services.	Salt Lake City, UT	July 5, 2011.
81,789	Easy Gardener Products, Inc., Adecco.	Batesburg-Leesville, SC	July 9, 2011.
81,806	Gates Corporation, Ashe County P2P Hydraulic Tubing Assembly Facility, Tomkins, LTD, Kelly Services.	Jefferson, NC	July 16, 2011.
81,808	Ferrara Candy Company, Inc., Formerly Farley's & Sathers Candy Company, Inc., Select Staff.	Chattanooga, TN	July 29, 2012.
81,808A	Ferrara Candy Company, Inc., Formerly Farley's & Sathers Candy, Select Staffing.	Chattanooga, TN	July 17, 2011.
81,809	Sathers Trucking, Inc., Ferrara Candy, Farley's & Sathers Candy, Traffic Dept, Select Staffing.	Chattanooga, TN	July 17, 2011.
81,810	ESIS, Inc., ACE American Insurance Co..	Chatsworth, CA	July 17, 2011.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W number	Subject firm	Location	Impact date
81,644	Sapa Extrusions, Personnel Plus	City of Industry, CA	May 19, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W number	Subject firm	Location	Impact date
81,689A	Niles America Wintech, Inc., Assembly & Testing Div., Valeo Company, Adecco Employment Services.	Winchester, KY.	
81,778	GP Strategies Corporation, RWD Technologies, On-site at Continental Automotive Systems.	Huntsville, AL.	
81,815	Hartford Financial Services Group, Inc., Commercial/Actuarial/(IDS)/Corporate & Financial Reporting.	Hartford, CT.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W number	Subject firm	Location	Impact date
81,571	Cadmus Print Services	Easton, PA.	
81,601	Celestica, Dallas Division	Farmers Branch, TX.	
81,689	Niles America Wintech, Inc., Warehousing Div., Valeo Company, Adecco Employment Services.	Winchester, KY.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W number	Subject firm	Location	Impact date
81,785	DTE Energy, RG Steel Sparrows Point LLC, Severstal Sparrows Point LLC, RG Steel LLC.	Sparrows Point, MD.	
81,825	Institute for Career Development, RG Steel Sparrows Point LLC, Severstal Sparrows Point LLC, RG Steel LLC.	Sparrows Point, MD.	
81,833	Onsite Innovations, Inc., RG Steel Sparrows Point LLC, Severstal Sparrows Point LLC, RG Steel LLC.	Sparrows Point, MD.	

I hereby certify that the aforementioned determinations were issued during the period of *July 30, 2012 through August 3, 2012.* These determinations are available on the Department's Web site tradeact/taa/taa search form.cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: August 7, 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–20113 Filed 8–15–12; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings

The National Science Board, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference meeting of the Audit and Oversight Committee for the transaction of National Science Board business.

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Tuesday, August 21, 2012 from 4:00–5:00 p.m.

SUBJECT MATTER: Chairman's remarks, discussion of NSF Office of Inspector General FY 2014 Budget.

STATUS: Closed.

PLACE: This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230.

UPDATES: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jacqueline Meszaros, *jmeszaro@nsf.gov,* (703) 292–7000.

Ann Bushmiller,

NSB Senior Legal Counsel.

[FR Doc. 2012–20196 Filed 8–14–12; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings

The National Science Board, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference meeting of the National Science Board for the transaction of National Science Board business.

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Thursday, August 23, 2012 from 1:00–2:00 p.m.

SUBJECT MATTER: Chairman's remarks, discussion of Advanced Laser Interferometer Gravitational Wave Observatory (AdvLIGO) Construction Project Change in Scope, and discussion of and action on closed committee reports.

STATUS: Closed.

PLACE: This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

UPDATES: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Ann Ferrante, *aferrant@nsf.gov,* (703) 292–7000.

Ann Bushmiller,

NSB Senior Legal Counsel.

[FR Doc. 2012–20198 Filed 8–14–12; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings

The National Science Board, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference meeting of the Committee on Strategy and Budget for the transaction of National Science Board business.

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Tuesday, August 21, 2012 from 5:00–6:00 p.m.

SUBJECT MATTER: Chairman's remarks, consideration and approval of the National Science Foundation FY 2014 budget.

STATUS: Closed.

PLACE: This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230.

UPDATES: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jacqueline Meszaros, *jmeszaro@nsf.gov,* (703) 292–7000.

Ann Bushmiller,

NSB Senior Legal Counsel.

[FR Doc. 2012–20197 Filed 8–14–12; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362; NRC–2012–0192]

Southern California Edison, San Onofre Nuclear Generating Station, Units 2 and 3; Application and Amendment to Facility Operating License Involving Proposed No Significant Hazards Consideration Determination

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing and petition for leave to intervene.

DATES: Comments must be filed by September 17, 2012. A request for a hearing must be filed by October 15, 2012.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0192. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0192. 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.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sebrosky, Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1132; email: *Joseph.Sebrosky@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0192 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 are publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0192.
- *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.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The application for amendment, dated July 29, 2011 is available electronically under ADAMS Accession No. ML112510214.
- *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–2012–0192 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 enters the comment submissions into ADAMS. 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.

II. Introduction

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–10 and NPF–15 issued to Southern California Edison Company (SCE, the licensee) for operation of the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, located in San Diego County, California.

The licensee submitted a license amendment request (LAR) for SONGS, Units 2 and 3, dated July 29, 2011, requesting approval to convert the Current Technical Specifications (CTS) to be consistent with the most recently approved version of the Standard Technical Specifications (STS) for Combustion Engineering Plants, NUREG–1432. In 1996, SONGS was the first plant to adopt the STS for Combustion Engineering plants (NUREG–1432, Revision 0). Over time, a number of changes and revisions have been made to those STS, and this LAR seeks to update the SONGS CTS to the Improved STS (ITS) reflected in NUREG–1432, Revision 3, with the additional adoption of some recent Technical Specification Task Force (TSTF) travelers. The LAR also includes beyond scope changes that are beyond the scope of the ITS as described in NUREG–1432, Revision 3, and beyond the scope of the SONGS CTS.

Attachment 1 of the LAR contains 15 volumes; Volumes 1–14 provide a detailed description of the proposed changes to the following ITS Chapters and Sections:

Volume 1	ITS Chapter 1.0, Use and Application
Volume 2	ITS Chapter 2.0, Safety Limits (SLs)
Volume 3	ITS Section 3.0, Limiting Condition for Operation (LCO) Applicability and Surveillance Requirement (SR) Applicability
Volume 4	ITS Section 3.1, Reactivity Control Systems
Volume 5	ITS Section 3.2, Power Distribution Limits
Volume 6	ITS Section 3.3, Instrumentation
Volume 7	ITS Section 3.4, Reactor Coolant System (RCS)
Volume 8	ITS Section 3.5, Emergency Core Cooling Systems (ECCS)
Volume 9	ITS Section 3.6, Containment Systems
Volume 10 ...	ITS Section 3.7, Plant Systems
Volume 11 ...	ITS Section 3.8, Electrical Power Systems
Volume 12 ...	ITS Section 3.9, Refueling Operations
Volume 13 ...	ITS Chapter 4.0, Design Features
Volume 14 ...	ITS Chapter 5.0, Administrative Controls

Enclosure 2 of the LAR provides a description of the three beyond scope changes, and Enclosure 3 includes a list of the TSTFs that would be adopted in whole or in part in the proposed amendment.

This notice is based on the LAR dated July 29, 2011, and the information provided to the NRC through the *San Onofre ITS Conversion Web page* hosted by Excel Services Corporation at *http://www.excelservices.com*. To expedite the review of the application, the NRC staff issued or will issue its requests for additional information (RAIs) and the licensee addressed or will address the RAIs through the ITS Conversion Web page. Entry into the database is protected so that only the licensee and NRC reviewers can enter information into the database to add RAIs (NRC) or provide responses to the RAIs (the licensee); however, the public can enter the database to read the questions asked and the responses provided. To be in compliance with the regulations for written communications for LARs and to have the database on the SONGS dockets before the amendments would be issued, the licensee will provide a copy of the database in a submittal to the NRC after there are no future RAIs and before the amendments can be issued. The RAIs and responses to RAIs are organized by ITS Section.

The licensee has classified each proposed change to the SONGS CTS into one of the following five categories (with its letter designator within brackets):

- Administrative changes (A)—Changes to the CTS that do not result in new requirements or change operational restrictions or flexibility. These changes are supported in aggregate by a single generic no significant hazards consideration (NSHC).
- More restrictive changes (M)—Changes to the CTS that result in added restrictions or reduced flexibility. These changes are supported in aggregate by a single generic NSHC.
- Relocated specifications (R)—Changes to the CTS that relocate specifications that do not meet the selection criteria of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.36(c)(2)(ii). These changes are supported in aggregate by a single generic NSHC.
- Removed detail changes (LA)—Changes to the CTS that eliminate detail and relocate the detail to a licensee-controlled document. Typically, this involves details of system design and function, or procedural detail on methods of conducting a Surveillance Requirement (SR). These changes are supported in aggregate by a single generic NSHC.
- Less restrictive changes (L)—Changes to the CTS that result in reduced restrictions or added flexibility. These changes are supported either in aggregate by a generic NSHC that addresses a particular category of less restrictive change, or by a specific NSHC if the change does not fall into one of the eight categories of less restrictive changes. The eight categories of less restrictive changes are designated as:

—Category 1—Relaxation of LCO Requirements
—Category 2—Relaxation of Applicability
—Category 3—Relaxation of Completion Time
—Category 4—Relaxation of Required Action
—Category 5—Deletion of Surveillance Requirement
—Category 6—Relaxation of Surveillance Requirement Acceptance Criteria
—Category 7—Relaxation of Surveillance Frequency
—Category 8—Deletion of Reporting Requirements

If the less restrictive change is covered by a generic NSHC, the category of the change is identified in italics at the beginning of the discussion of changes (DOCs) in the LAR.

The three less restrictive changes covered by a specific NSHC are

described in the LAR in ITS 1.0, ''Use and Applications,'' Less Restrictive Change L01 (Attachment 1, Volume 1, page 112), and ITS 3.0, ''LCO and SR Applicability,'' Less Restrictive Changes L01 and L02 (Attachment 1, Volume 3, pages 2 and 4, respectively).

Administrative Changes. Some of the proposed changes involve reformatting, renumbering, and rewording of CTS with no change in intent. These changes, since they do not involve technical changes to the CTS, are administrative. This type of change is connected with the movement of requirements within the current requirements, or with the modification of wording that does not affect the technical content of the CTS. These changes also include non-technical modifications of requirements to conform to TSTF–GG–05–01, ''Writer's Guide for Plant-Specific Improved Standard Technical Specifications,'' or provide consistency with the ITS in NUREG–1432. Administrative changes are not intended to add, delete, or relocate any technical requirements of the CTS.

More Restrictive Changes. Some of the proposed changes involve adding more restrictive requirements to the CTS by either making current requirements more stringent or by adding new requirements that currently do not exist. These changes include additional requirements that decrease allowed outage times, increase the Frequency of Surveillances, impose additional Surveillances, increase the scope of Specifications to include additional plant equipment, increase the Applicability of Specifications, or provide additional actions. These changes are generally made to conform to NUREG–1432 and have been evaluated to not be detrimental to plant safety.

Relocated Specifications. Some of the proposed changes involve relocating CTS LCOs to licensee-controlled documents. SCE has evaluated the CTS using the criteria set forth in 10 CFR 50.36. Specifications identified by this evaluation that did not meet the retention requirements specified in the regulation are not included in the ITS. These specifications have been relocated from the CTS to either the Licensee Controlled Specification (LCS), which is currently incorporated by reference into the Updated Final Safety Analysis Report (UFSAR) or the UFSAR.

Removed Detail Changes. Some of the proposed changes involve moving details out of the CTS and into the TS Bases, the UFSAR, the Containment Leakage Rate Testing (CLRT) Program, the LCS, or other documents under regulatory control, such as the Offsite Dose Calculation Manual (ODCM), the Quality Assurance Program (QAP), the Inservice Testing (IST) Program, the Inservice Inspection (ISI) Program, and the Surveillance Frequency Control Program (SFCP). The removal of this information is considered to be less restrictive because it is no longer controlled by the TS change process. Typically, the information moved is descriptive in nature and its removal conforms to NUREG–1432 for format and content.

Less Restrictive Changes—Category 1—Relaxation of LCO Requirements. Some of the proposed changes involve relaxation of the CTS Limiting Conditions for Operation (LCOs) by the elimination of specific items from the LCO or Tables referenced in the LCO, or the addition of exceptions to the LCO. These changes reflect the ITS approach to provide LCO requirements that specify the protective conditions that are required to meet safety analysis assumptions for required features. These conditions replace the lists of specific devices used in the CTS to describe the requirements needed to meet the safety analysis assumptions. The ITS also includes LCO Notes which allow exceptions to the LCO for the performance of testing or other operational needs. The ITS provides the protection required by the safety analysis, and provides flexibility for meeting the conditions without adversely affecting operations since equivalent features are required to be OPERABLE. The ITS is also consistent with the plant current licensing basis, as may be modified in the discussion of individual changes. These changes are generally made to conform with NUREG–1432, and have been evaluated to not be detrimental to plant safety.

Less Restrictive Changes—Category 2—Relaxation of Applicability. Some of the proposed changes involve relaxation of the applicability of CTS LCOs by reducing the conditions under which the LCO requirements must be met. CTS requirements are being eliminated during conditions for which the safety function of the specified safety system is met because the feature is performing its intended safety function. Deleting applicability requirements that are indeterminate or which are inconsistent with application of accident analyses assumptions is acceptable because when LCOs cannot be met, the ITS may be satisfied by exiting the applicability which takes the plant out of the conditions that require the safety system to be OPERABLE. This change provides the protection required by the safety analyses, and provides flexibility for meeting limits by restricting the application of the limits to the conditions assumed in the safety analyses. The ITS is also consistent with the plant current licensing basis, as may be modified in the discussion of individual changes. The change is generally made to conform with NUREG–1432, and has been evaluated to not be detrimental to plant safety.

Less Restrictive Changes—Category 3—Relaxation of Completion Time. Some of the proposed changes involve relaxation of the Completion Times for Required Actions in the CTS. Upon discovery of a failure to meet an LCO, the ITS specifies times for completing Required Actions of the associated Conditions. Required Actions of the associated Conditions are used to establish remedial measures that must be taken within specified Completion Times. These times define limits during which operation in a degraded condition is permitted. Adopting Completion Times from the ITS is acceptable because the Completion Times take into account the OPERABILITY status of the redundant systems of required features, the capacity and capability of remaining features, a reasonable time for repairs or replacement of required features, and the low probability of a Design Basis Accident (DBA) occurring during the repair period. In addition, the ITS provides consistent Completion Times for similar conditions. These changes are generally made to conform with NUREG–1432, and have been evaluated to not be detrimental to plant safety.

Less Restrictive Changes—Category 4—Relaxation of Required Action. Some of the proposed changes involve relaxation of the Required Actions in the CTS. Upon discovery of a failure to meet an LCO, the ITS specifies Required Actions to complete for the associated Conditions. Required Actions of the associated Conditions are used to establish remedial measures that must be taken in response to the degraded conditions. These actions minimize the risk associated with continued operation while providing time to repair inoperable features. Some of the Required Actions are modified to place the plant in a MODE in which the LCO does not apply. Adopting Required Actions from NUREG–1432 is acceptable because the Required Actions take into account the OPERABILITY status of redundant systems of required features, the capacity and capability of the remaining features, and the compensatory attributes of the Required Actions as compared to the LCO requirements. These changes are generally made to

conform with NUREG–1432, and have been evaluated to not be detrimental to plant safety.

Less Restrictive Changes—Category 5—Deletion of Surveillance Requirement. Some of the proposed changes involve deletion of SRs in the CTS. The CTS require safety systems to be tested and verified OPERABLE prior to entering applicable operating conditions. The ITS eliminates unnecessary CTS SRs that do not contribute to verification that the equipment used to meet the LCO can perform its required functions. Thus, appropriate equipment continues to be tested in a manner and at a frequency necessary to give confidence that the equipment can perform its assumed safety functions. These changes are generally made to conform with NUREG–1432, and have been evaluated to not be detrimental to plant safety.

Less Restrictive Changes—Category 6—Relaxation of Surveillance Requirement Acceptance Criteria. Some of the proposed changes involve the relaxation of SRs acceptance criteria in the CTS. The CTS require safety systems to be tested and verified OPERABLE prior to entering applicable operating conditions. The ITS eliminates or relaxes the SR acceptance criteria that do not contribute to verification that the equipment used to meet the LCO can perform its required functions. For example, the ITS allows some SRs to verify OPERABILITY under actual or test conditions. Adopting the ITS allowance for ''actual'' conditions is acceptable because required features cannot distinguish between an ''actual'' signal or a ''test'' signal. Also included are changes to CTS requirements that are replaced in the ITS with separate and distinct testing requirements that when combined, include OPERABILITY verification of all components required in the LCO for the features specified in the CTS. Adopting this format preference in the ITS is acceptable because SRs that remain include testing of all previous features required to be verified OPERABLE. Changes that provide exceptions to SRs to provide for variations that do not affect the results of the test are also included in this category. These changes are generally made to conform with NUREG–1432, and have been evaluated to not be detrimental to plant safety.

Less Restrictive Changes—Category 7—Relaxation of Surveillance Frequency. Some of the proposed changes involve the relaxation of Surveillance Frequencies in the CTS. CTS and ITS Surveillance Frequencies specify time interval requirements for performing Surveillance tests. Increasing the time interval between Surveillance tests in the ITS results in decreased equipment unavailability due to testing which also increases equipment availability. In general, the ITS contain Surveillance Frequencies that are consistent with industry practice or industry standards for achieving acceptable levels of equipment reliability. Adopting testing practices specified in the ITS is acceptable based on similar design, like-component testing for the system application and the availability of other ITS requirements which provide regular checks to ensure limits are met. Relaxation of Surveillance Frequency can also include the addition of Surveillance Notes which allow testing to be delayed until appropriate unit conditions for the test are established, or exempt testing in certain MODES or specified conditions in which the testing cannot be performed.

Reduced testing can result in a safety enhancement because the unavailability due to testing is reduced, and reliability of the affected structure, system or component should remain constant or increase. Reduced testing is acceptable where operating experience, industry practice, or the industry standards such as manufacturers' recommendations have shown that these components usually pass the Surveillance when performed at the specified interval, thus the Surveillance Frequency is acceptable from a reliability standpoint. Surveillance Frequency changes to incorporate alternate train testing have been shown to be acceptable where other qualitative or quantitative test requirements are required that are established predictors of system performance. Surveillance Frequency extensions can be based on NRC-approved topical reports. The NRC staff has accepted topical report analyses that bound the plant-specific design and component reliability assumptions. These changes are generally made to conform with NUREG–1432, and have been evaluated to not be detrimental to plant safety.

Less Restrictive Changes—Category 8—Deletion of Reporting Requirements. Some of the proposed changes involve the deletion of requirements in the CTS to send reports to the NRC. The CTS includes requirements to submit reports to the NRC under certain circumstances. However, the ITS eliminates these requirements for many such reports and, in many cases, relies on the reporting requirements of 10 CFR 50.73 or other regulatory requirements. The ITS changes to reporting requirements are acceptable because the regulations provide adequate reporting requirements, or the reports do not affect continued plant operation. Therefore, this change has no effect on the safe operation of the plant. These changes are generally made to conform with NUREG–1432, and have been evaluated to not be detrimental to plant safety.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves 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. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, by classification of change, which is presented below. The generic proposed NSHC, by classification of change, are listed first, followed by the specific proposed NSHC related to ITS Chapter 1.0 Less Restrictive Change L01, ITS Section 3.0 Less Restrictive Change L01, and ITS Section 3.0 Less Restrictive change L02 (changes that do not fall into one of the eight categories of less restrictive changes).

Generic Proposed NSHC

Administrative Changes

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves reformatting, renumbering, and rewording the CTS. The reformatting, renumbering, and rewording process involves no technical changes to the CTS. As such, this change is administrative in nature and does 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. 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 does not involve a physical alteration of the plant (no new or

different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or eliminate any old 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 change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any safety analyses assumptions. This change is administrative in nature.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

More Restrictive Changes

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change provides more stringent Technical Specification requirements for the facility. These more stringent requirements do not result in operations that significantly increase the probability of initiating an analyzed event, and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis.

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.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change does impose different Technical Specification requirements. However, these changes are consistent with the assumptions in the safety analyses and licensing basis.

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 change involve a significant reduction in a margin of safety?

Response: No.

The imposition of more restrictive requirements either has no effect on or increases the margin of plant safety. As provided in the discussion of change, each change in this category is, by definition, providing additional restrictions to enhance plant safety. The change maintains requirements within the safety analyses and licensing basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Relocated Specifications

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates requirements and Surveillances for structures, systems, components, or variables that do not meet the criteria of 10 CFR 50.36(c)(2)(ii) for inclusion in Technical Specifications as identified in the Application of Selection Criteria to the SONGS Technical Specifications. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and Surveillances for these affected structures, systems, components, or variables will be relocated from the CTS to the LCS, which is currently incorporated by reference into the UFSAR, thus it will be maintained pursuant to 10 CFR 50.59. The UFSAR is subject to the change control provisions of 10 CFR 50.59 and 10 CFR 50.71(e). In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures which are also controlled by 10 CFR 50.59, and are subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards.

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.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements, and adequate control of existing requirements will be maintained.

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 change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no significant effect on any safety analyses assumptions, as indicated by the fact that the requirements do not meet the 10 CFR 50.36 criteria for retention. In addition, the relocated requirements are moved without change, and any future changes to these requirements will be evaluated per 10 CFR 50.59.

NRC prior review and approval of changes to these relocated requirements, in accordance with 10 CFR 50.92, will no longer be required. This review and approval does not provide a specific margin of safety that can be evaluated. However, the proposed change is consistent with NUREG–1432, issued by the NRC, which allows revising the CTS to relocate these requirements and Surveillances to a licensee controlled document.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Removed Detail Changes

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates certain details from the CTS to other documents under regulatory control. The Technical Specification Bases and the LCS, which is currently incorporated by reference into the UFSAR, will be maintained in accordance with 10 CFR 50.59. In addition to 10 CFR 50.59 provisions, the Technical Specification Bases are subject to the change control provisions in the Administrative Controls Chapter of the ITS. The UFSAR is subject to the change control provisions of 10 CFR 50.59 and 10 CFR 50.71(e). Other documents are subject to controls imposed by the ITS or other regulations. Since any changes to these documents will be evaluated, no significant increase in the probability or consequences of an accident previously evaluated will be allowed.

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.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The proposed change will not impose or eliminate any requirements, and adequate control of the information will be maintained.

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 change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. In addition, the details to be moved from the CTS to other documents are not being changed. Since any future changes to these details will be evaluated under the applicable regulatory change control mechanism, no significant reduction in a margin of safety will be allowed. A significant reduction in the margin of safety is not associated with the elimination of the 10 CFR 50.90 requirement for NRC review and approval of future changes to the relocated details. Not including these details in the Technical Specifications is consistent with NUREG–1432, issued by the NRC, which allows revising the Technical Specifications to relocate these requirements and Surveillances to a licensee controlled document controlled by 10 CFR 50.59, 10 CFR 50.71(e), or other Technical

Specification controlled or regulation controlled documents.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Less Restrictive Changes—Category 1—Relaxation of LCO Requirements

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change provides less restrictive LCO requirements for operation of the facility. These less restrictive LCO requirements do not result in operation that will significantly increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event in that the requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the current safety analyses and licensing basis.

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.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change does impose different requirements. However, the change is consistent with the assumptions in the current safety analyses and licensing basis.

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 change involve a significant reduction in a margin of safety?

Response: No.

The imposition of less restrictive LCO requirements does not involve a significant reduction in the margin of safety. As provided in the discussion of change, this change has been evaluated to ensure that the current safety analyses and licensing basis requirements are maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Changes—Category 2—Relaxation of Applicability

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relaxes the conditions under which the LCO requirements for operation of the facility must be met. These less restrictive applicability requirements for the LCOs do not result in operation that will significantly increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event in that the requirements continue to ensure that process variables, structures, systems, and components are maintained in the MODES and other specified conditions assumed in the safety analyses and licensing basis.

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.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change does impose different requirements. However, the requirements are consistent with the assumptions in the safety analyses and licensing basis.

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 change involve a significant reduction in a margin of safety?

Response: No.

The relaxed applicability of LCO requirements does not involve a significant reduction in the margin of safety. As provided in the discussion of change, this change has been evaluated to ensure that the LCO requirements are applied in the MODES and specified conditions assumed in the safety analyses and licensing basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Changes—Category 3—Relaxation of Completion Time

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relaxes the Completion Time for a Required Action. Required Actions and their associated Completion Times are not initiating conditions for any accident previously evaluated, and the accident analyses do not assume that required equipment is out of service prior to the analyzed event. Consequently, the relaxed Completion Time does not significantly increase the probability of any accident previously evaluated. The consequences of an analyzed accident during the relaxed Completion Time are the same as the consequences during the existing Completion Time. As a result, the consequences of any accident previously evaluated are not significantly increased.

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.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the method governing normal plant operation. The Required Actions and associated Completion Times in the ITS have been evaluated to ensure that no new accident initiators are introduced.

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 change involve a significant reduction in a margin of safety?

Response: No.

The relaxed Completion Time for a Required Action does not involve a significant reduction in the margin of safety. As provided in the discussion of change, the change has been evaluated to ensure that the allowed Completion Time is consistent with safe operation under the specified Condition, considering the OPERABILITY status of the redundant systems of required features, the capacity and capability of remaining features, a reasonable time for repairs or replacement of required features, and the low probability of a DBA occurring during the repair period.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Changes—Category 4—Relaxation of Required Action

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relaxes Required Actions. Required Actions and their associated Completion Times are not initiating conditions for any accident previously evaluated, and the accident analyses do not assume that required equipment is out of service prior to the analyzed event. Consequently, the relaxed Required Actions do not significantly increase the probability of any accident previously evaluated. The Required Actions in the ITS have been developed to provide appropriate remedial actions to be taken in response to the degraded condition considering the OPERABILITY status of the redundant systems of required features, and the capacity and capability of remaining features while minimizing the risk associated with continued operation. As a result, the consequences of any accident previously evaluated are not significantly increased.

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.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The Required Actions and associated Completion Times in the ITS have been evaluated to ensure that no new accident initiators are introduced.

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 change involve a significant reduction in a margin of safety?

Response: No.

The relaxed Required Actions do not involve a significant reduction in the margin of safety. As provided in the discussion of change, this change has been evaluated to minimize the risk of continued operation under the specified Condition, considering the OPERABILITY status of the redundant systems of required features, the capacity and capability of remaining features, a reasonable time for repairs or replacement of required features, and the low probability of a Design Basis Accident (DBA) occurring during the repair period.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Changes—Category 5—Deletion of Surveillance Requirement

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change deletes Surveillance Requirements. Surveillances are not initiators to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be OPERABLE and capable of performing the accident mitigation functions assumed in the accident analyses. As a result, the consequences of any accident previously evaluated are not significantly 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.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The remaining Surveillance Requirements are consistent with industry practice, and are considered sufficient to prevent the removal of the subject Surveillances from creating a new or different type of accident.

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 change involve a significant reduction in a margin of safety?

Response: No.

The deleted Surveillance Requirements do not result in a significant reduction in the margin of safety. As provided in the discussion of change, the change has been evaluated to ensure that the deleted Surveillance Requirements are not necessary for verification that the equipment used to meet the LCO can perform its required functions. Thus, appropriate equipment continues to be tested in a manner and at a frequency necessary to give confidence that the equipment can perform its assumed safety function.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Changes—Category 6—Relaxation of Surveillance Requirement Acceptance Criteria

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relaxes the acceptance criteria of Surveillance Requirements. Surveillances are not initiators to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be OPERABLE and capable of performing the accident mitigation functions assumed in the accident analyses. As a result, the consequences of any accident previously evaluated are not significantly 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.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

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 change involve a significant reduction in a margin of safety?

Response: No.

The relaxed acceptance criteria for Surveillance Requirements do not result in a significant reduction in the margin of safety. As provided in the discussion of change, the relaxed Surveillance Requirement acceptance criteria have been evaluated to ensure that they are sufficient to verify that the equipment used to meet the LCO can perform its required functions. Thus, appropriate equipment continues to be tested in a manner that gives confidence that the equipment can perform its assumed safety function.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Changes—Category 7—Relaxation of Surveillance Frequency

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relaxes Surveillance Frequencies. The relaxed Surveillance Frequencies have been established based on achieving acceptable levels of equipment reliability. Consequently, equipment that could initiate an accident previously evaluated will continue to operate as expected, and the probability of the initiation of any accident previously evaluated will not be significantly increased. The equipment being tested is still required to be OPERABLE and capable of performing any accident mitigation functions assumed in the accident analyses. As a result, the consequences of any accident previously evaluated are not significantly 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.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

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 change involve a significant reduction in a margin of safety?

Response: No.

The relaxed Surveillance Frequencies do not result in a significant reduction in the margin of safety. As provided in the discussion of change, the relaxation in the Surveillance Frequency has been evaluated to ensure that it provides an acceptable level of equipment reliability. Thus, appropriate equipment continues to be tested at a Frequency that gives confidence that the equipment can perform its assumed safety function when required.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Changes—Category 8—Deletion of Reporting Requirements

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change deletes reporting requirements. Sending reports to the NRC is not an initiator of any accident previously evaluated. Consequently, the probability of any accident previously evaluated is not significantly increased. Sending reports to the NRC has no effect on the ability of equipment to mitigate an accident previously evaluated. As a result, the consequences of any accident previously evaluated is not significantly 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.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed)

or a change in the methods governing normal plant operation.

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 change involve a significant reduction in a margin of safety?

Response: No.

The deletion of reporting requirements does not result in a significant reduction in the margin of safety. The ITS eliminates the requirements for many such reports and, in many cases, relies on the reporting requirements of 10 CFR 50.73 or other regulatory requirements. The change to reporting requirements does not affect the margin of safety because the regulations provide adequate reporting requirements, or the reports do not affect continued plant operation.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Specific Proposed NSHC (Change Does Not Fall Into One of Eight Categories of Less Restrictive Changes)

ITS Chapter 1.0, ''Use and Applications,'' Less Restrictive Change L01 (LAR, Attachment 1, Volume 1; page 112 of 114):

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates certain Completion Times from the Technical Specifications. Completion Times are not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident during the revised Completion Time are no different than the consequences of the same accident during the existing Completion Times. As a result, the consequences of an accident previously evaluated are not affected by this change. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change is consistent with the safety analysis assumptions and resultant consequences. 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.

The change does 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. The change does not alter any assumptions made in the safety analysis. 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.

The proposed change to delete the second Completion Time does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside of the design basis. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

ITS Section 3.0, ''LCO and SR Applicability,'' Less Restrictive Change L01 (LAR, Attachment 1, Volume 3, page 57 of 64):

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. Entrance into Actions or delaying entrance into Actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on the delay time allowed before declaring a TS supported system inoperable and taking its Conditions and Required Actions are no different than the consequences of an accident under the same plant conditions while relying on the existing TS supported system Conditions and Required Actions. Therefore, the consequences of an accident previously evaluated are not significantly increased by this change. Therefore, 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 change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this 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.

The proposed change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. The proposed change restores an allowance in the pre-ISTS conversion TS that was unintentionally eliminated by the conversion. The pre-ISTS TS were considered to provide an adequate margin of safety for plant operation, as does the post-ISTS conversion TS. Therefore, this change does not involve a significant reduction in a margin of safety.

ITS Section 3.0, ''LCO and SR Applicability,'' Less Restrictive Change L02 (LAR, Attachment 1, Volume 3, page 60 of 64):

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows entry into a MODE while relying on ACTIONS. Being in an ACTION is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on ACTIONS as allowed by the proposed LCO 3.0.4 are no different than the consequences of an accident while relying on ACTIONS for other reasons, such as equipment inoperability. Therefore, the consequences of an accident previously evaluated are not significantly increased by this change. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Response: No.

The proposed change allows entry into a MODE or other specified conditions in the Applicability while relying on ACTIONS. The Technical Specifications allow operation of the plant without a full complement of equipment. The risk associated with this allowance is managed by the imposition of ACTIONS and Completion Times. The net effect of ACTIONS and Completion Times on the margin of safety is not considered significant. The proposed change does not change the ACTIONS or Completion Times of the Technical Specifications. The proposed change allows the ACTIONS and Completion Times to be used in new circumstances. However, this use is predicated on an assessment which focuses on managing plant risk. In addition, most current allowances to utilize the ACTIONS and Completion Times which do not require risk assessment are eliminated. As a result, the net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's generic and specific NSHC analyses of each classification of change and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied for each proposed classification of change. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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.

III. Opportunity to Request a Hearing; Petition for Leave to Intervene

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. 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 O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's 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 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 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 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.

IV. Electronic Submissions (E-Filing)

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 ten 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 identification (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 NRC'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 the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's 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's 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's 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 NRC'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's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 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 August 16, 2012. 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 action, see the application for amendment dated July 29, 2011.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Michael T. Markley.

Dated at Rockville, Maryland, this 8th day of August 2012.

For the Nuclear Regulatory Commission.

Joseph M. Sebrosky,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–20114 Filed 8–15–12; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 3:00 p.m., Thursday, September 6, 2012.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 3:00 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5:00 p.m., Thursday, August 30, 2012. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford

all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5:00 p.m. Thursday, August 30, 2012. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the September 13, 2012 Board meeting will be posted on OPIC's Web site on or about Friday, August 24, 2012.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via email at *Connie.Downs@opic.gov.*

Dated: August 13, 2012.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2012–20254 Filed 8–14–12; 4:15 pm]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–38 and CP2012–46; Order No. 1425]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 40 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* August 17, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 40 to the competitive product list.[1] The Postal Service asserts that Priority Mail Contract 40 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2012–38.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–46.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on September 1, 2012. *Id.* at 4. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–38 and CP2012–46 to consider the Request pertaining to the proposed Priority Mail Contract 40 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than August 17, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–38 and CP2012–46 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than August 17, 2012.

[1] Request of the United States Postal Service to Add Priority Mail Contract 40 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision Contract, and Supporting Data, August 8, 2012 (Request).

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–20070 Filed 8–15–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–39 and CP2012–47; Order No. 1426]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 41 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* August 17, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 41 to the competitive product list.[1] The Postal Service asserts that Priority Mail Contract 41 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2012–39.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–47.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day the Commission issues all necessary regulatory approval. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* at 3. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–39 and CP2012–47 to consider the Request pertaining to the proposed Priority Mail Contract 41 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than August 17, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–39 and CP2012–47 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than August 17, 2012.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–20071 Filed 8–15–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 16, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

[1] Request of the United States Postal Service to Add Priority Mail Contract 41 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, August 8, 2012 (Request).

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 12 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–41, CP2012–49.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–20091 Filed 8–15–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service ™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective Date:* August 16, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 11 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–40, CP2012–48.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–20093 Filed 8–15–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 16, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 13 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–42, CP2012–50.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–20096 Filed 8–15–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 16, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 9, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 14 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–43, CP2012–51.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–20095 Filed 8–15–12; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–1(b), OMB Control No. 270–28, SEC File No. 270–28.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17f–1(b) (17 CFR 240.17f–1(b)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

Rule 17f–1(b) requires approximately 25,000 entities in the securities industry to register in the Lost and Stolen Securities Program (''Program''). Registration fulfills a statutory requirement that entities report and inquire about missing, lost, counterfeit, or stolen securities. Registration also allows entities in the securities industry to gain access to a confidential database that stores information for the Program.

The Commission staff estimates that 1,000 new entities will register in the Program each year. The staff estimates that the average number of hours necessary to comply with Rule 17f–1(b) is one-half hour. The total estimated burden is therefore 500 hours (1,000 times one-half hour) annually for all participants.

Rule 17f–1(b) is a registration obligation only. Registering under rule 17f–1(b) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Program. Reporting institutions required to register under Rule 17f–1(b) will not be kept confidential; however, the Program database will be kept confidential.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not have a valid OMB control number.

Background documentation for this information collection may be viewed at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments

must be submitted to OMB within 30 days of this notice.

Dated: August 10, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–20098 Filed 8–15–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–2(a), SEC File No. 270–34, OMB Control No. 3235–0034.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information for Rule 17f–2(a) (17 CFR 240.17–2(a)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17f–2(a) (Fingerprinting Requirements for Securities Professionals) requires that securities professionals be fingerprinted. This requirement serves to identify security-risk personnel, to allow an employer to make fully informed employment decisions, and to deter possible wrongdoers from seeking employment in the securities industry. Partners, directors, officers, and employees of exchanges, brokers, dealers, transfer agents, and clearing agencies are included.

The Commission staff estimates that approximately 10,000 respondents will submit fingerprint cards each year. It also estimates that each respondent will submit 55 fingerprint cards per year. The staff estimates that the average number of hours necessary to comply with Rule 17f–2(a) by completing a fingerprint card is one-half hour. Thus, the total estimated annual burden is 275,000 hours for all respondents (550,000 times one-half hour). The average estimated internal labor cost of compliance per hour is approximately $50. Therefore, the total estimated annual internal labor cost of compliance for all respondents is $13,750,000 (275,000 times $50).

Fingerprint cards submitted under Rule 17f–2(a) must be retained for a period of not less than three years after termination of the person's employment relationship with the organization. Submitting fingerprint cards for all securities personnel is mandatory to obtain the benefit of identifying security-risk personnel, allowing an employer to make fully informed employment decisions and deterring possible wrongdoers from seeking employment in the securities industry. Fingerprint cards submitted according to Rule 17f–2(a) will not be kept confidential.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Background documentation for this information collection may be viewed at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: August 10, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–20099 Filed 8–15–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7982]

Notice of Extension of Public Comment Period for the Proposed New International Trade Crossing (NITC) Presidential Permit Application

In response to requests, the Department of State is extending the public comment period for the New International Trade Crossing (NITC) Presidential Permit application. The Department of State had originally set the end of the comment period at August 9, 2012. The Department has decided, in response to the requests noted above, to extend the comment period until September 10, 2012. Interested parties may submit written comments via email to *NITCComments@state.gov*.

The original notice of receipt of the Presidential Permit application was published by the Department of State in the **Federal Register** on Wednesday, July 11, 2012. [Public Notice 7951]. The Presidential permit application can be viewed online at *http://www.state.gov/p/wha/rt/permit/*.

Dated: July 10, 2012.

Elizabeth L. Martinez,

Director, Office of Canadian Affairs, Bureau of Western Hemisphere Affairs, Department of State.

[FR Doc. 2012–20162 Filed 8–15–12; 8:45 am]

BILLING CODE 4710–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Change in Hearing Date and Related Deadlines for the Country Practice Petitions Accepted as Part of the 2011 Annual GSP Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of change to the hearing date and related deadlines.

SUMMARY: The hearing date previously announced in the **Federal Register** (77 FR 41209) for the country practice petitions accepted as part of the 2011 Annual GSP Review and the related deadlines for submissions of pre-hearing briefs, requests to appear, and post-hearing briefs are being changed to those noted below.

DATES: September 18, 2012: Deadline for submission of pre-hearing briefs and requests to appear at the October 2, 2012 public hearing; submissions must be received by 5 p.m.

October 2, 2012: The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) will convene a public hearing on the country practice petitions at 1724 F Street NW., Washington, DC 20508, beginning at 9:30 a.m.

October 23, 2012: Deadline for submission of post-hearing briefs, which must be received by 5 p.m.

SUPPLEMENTARY INFORMATION: On July 12, 2012, a notice was published in the **Federal Register** (77 FR 41209) announcing, *inter alia,* that the hearing for the country practice petitions accepted as part of the 2011 Annual GSP Review was scheduled for September 27, 2012. The country

practice petitions newly accepted in the 2011 Annual GSP Review concern practices of Fiji, Indonesia, Iraq, and Ukraine. Pre-hearing briefs and requests to appear at the hearing were due by September 13, 2012, and that post-hearing comments were due by October 18, 2012. This notice changes the aforementioned dates.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508. The telephone number is (202) 395–6971; the fax number is (202) 395–9674, and the email address is *Tameka_Cooper@ustr.eop.gov*.

James Sanford,

Assistant U.S. Trade Representative for Small Business, Market Access & Industrial Competitiveness, Office of the U.S. Trade Representative.

[FR Doc. 2012–20149 Filed 8–15–12; 8:45 am]

BILLING CODE 3290–W2–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS436]

WTO Dispute Settlement Proceeding Regarding United States—Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products From India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that India has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning countervailing measures regarding certain hot-rolled carbon steel flat products from India. That request may be found at *www.wto.org* contained in a document designated as WT/DS436/3. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before September 28, 2012, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2012–0008. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Shane Warren, Assistant General Counsel, or Joseph Laroski, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that a dispute settlement panel has been established pursuant to the WTO Dispute Settlement Understanding (''DSU''). The panel will hold its meetings in Geneva, Switzerland.

Major Issues Raised by India

On July 12, 2012, India requested the establishment of a panel to consider claims related to countervailing measures regarding certain hot-rolled carbon steel flat products from India (Investigation C–533–821). India's challenge addresses the Tariff Act of 1930, in particular sections 771(7)(G) and 776(b), as well as Title 19 of the Code of Federal Regulations, sections 351.308 and 351.511(a)(2)(i)–(iv). In addition, India challenges certain actions of the United States with respect to U.S. Department of Commerce countervailing duty determinations and the countervailing duty order related to certain hot-rolled carbon steel flat products from India. The panel ''request covers the countervailing duties applied on the subject goods by the United States from time to time'' in connection with Case No. C–533–821. A list of proceedings and actions subject to the panel request is provided at Annex 1 to the request and includes determinations related to the original investigation, certain administrative reviews of the countervailing duty order, and a five-year ''sunset'' review of that order. The request also covers ''amendments, replacements, implementing acts or any other related measure in connection with the measures'' described above.

India alleges inconsistencies with Articles I and IV of the *General Agreement on Tariffs and Trade 1994* and Articles 1, 2, 10, 11, 12, 13, 14, 15, 19, 21, 22 and 32 of the *Agreement on Subsidies and Countervailing Measures.*

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2012–0008. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2012–0008 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comments'' field, or by attaching a document using an ''upload file'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential

in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *www.regulations.gov,* docket number USTR–2012–0008. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *www.wto.org.* Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

Bradford L. Ward,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2012–20148 Filed 8–15–12; 8:45 am]

BILLING CODE 3190–F2–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 28, 2012

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2012–0129.

Date Filed: July 24, 2012.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 14, 2012.

Description

Application of Rhoades Aviation, Inc. d/b/a Transair requesting a certificate of public convenience and necessity authorizing it to engage in foreign charter air transportation of property and mail.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–20131 Filed 8–15–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver Of Aeronautical Land-Use Assurance; Sidney Municipal Airport, Sidney, OH

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of 1 parcel of land totaling approximately 37.744 acres. The land is currently used for agricultural crop production. No facilities are located within the property boundaries. The land was acquired under FAA Project Number 3–39–0044–01. The aforementioned land is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the airport to dispose of the property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 17, 2012.

ADDRESSES: Documents reflecting this FAA action may be reviewed at the Detroit Airports District Office.

FOR FURTHER INFORMATION CONTACT: Mary Jagiello, Program Manager, Detroit Airports District Office, Federal Aviation Administration, 11677 South Wayne Road, Romulus, Michigan 48174. Telephone Number (734) 229–2956 FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Sidney Municipal Airport, Sidney, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property situated in the northwest quarter of section one, Orange Township, Town 1, Range 13, Shelby County, B.M.R.S., Ohio. Being bounded and described more fully as follows:

Parcel 212 Description:

Commencing for reference at an iron pin found at the Southwest corner of the Northwest quarter of said section one;

Thence North 5° – 32′ – 22″ East, 184.86 feet along the West line of said quarter section to a ⅝″ x 30″ iron pin with City of Sidney cap set for the place of beginning for this premise;

Thence continuing North 5° – 32′ – 22″ East, 1251.70 feet (along the East line of 40.000 acre and 78.638 acre parcels, as shown in Deed Vol. 358, Pg. 256, and Official Records Vol. 1277, Pg. 19 respectively) to an iron pin found;

Thence South 84° – 23′ – 02″ East, 1600.00 feet (along the south line of a 66.999 acre parcel owned by Sharon Ann Lucas, Mary Jane Durst & Connie Sue Smith, as shown in Deed Vol. 302, Pg. 373 of the Shelby County Records) to a ⅝″ x 30″ iron pin with City of Sidney cap set;

Thence South 5° – 32′ – 22″ West. 1239.95 feet (along the West line of a 30.020 acre parcel owned by Patrick T. & Amy J. Martin, as shown in Official Records Vol. 1306, Pg. 264 of the Shelby County Records) to a ⅝″ x 30″ iron pin with City of Sidney cap set;

Thence North 84° – 53′ – 21″ West, 724.48 feet along a new division line to a ⅝″ x 30″ iron pin with City of Sidney cap set;

Thence North 46° – 38′ – 39″ East, 871.89 feet along a new division line to a ⅝″ x 30″ iron pin with City of Sidney cap set;

Thence North 49° – 04′ – 00″ West, 450.00 feet along a new division line to a ⅝″ x 30″ iron pin with City of Sidney cap set;

Thence South 35° – 13′ – 22″ West, 964.79 feet along a new division line to a ⅝″ x 30″ iron pin with City of Sidney cap set;

Thence North 49° – 04′ – 00″ West, 71.00 feet along a new division line to a ⅝″ x 30″ iron pin with City of Sidney cap set;

Thence South 40° – 56′ – 06″ West, 150.34 feet along a new division line to a ⅝″ x 30″ iron pin with City of Sidney cap set;

Thence North 84° – 44′ – 05″ West, 459.20 feet returning to the place of beginning for this premise;

Containing 37.744 acres more or less, all being subject to any legal easements and highways of record.

Being part of the premises recorded in Deed Vol. 304, Pg. 154.

Bearings are based upon State Plane Coordinates, NAD 83, Geoid 99, Ohio North Zone.

Survey is recorded in Large Plat Vol. 33, Pg. 90.

Randall J. Magoto, Ohio Professional Surveyor number 7768, based upon a field survey completed in April, 2011, prepared the above description

Issued in Romulus, Michigan, on June 25, 2012.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2012–20142 Filed 8–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver Of Aeronautical Land-Use Assurance; Springfield-Beckley Municipal Airport, Springfield, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of 3 parcels of land totaling approximately 12.66 acres. The land is currently used for agricultural crop production and airport perimeter fence. No facilities are located within the property boundaries. Federal funds were not used to purchase the property and is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the sponsor to dispose of the property. Subject land will provide for the realignment and right-of-way needs of State Route 794. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 17, 2012.

ADDRESSES: Documents reflecting this FAA action may be reviewed at the Detroit Airports District Office.

FOR FURTHER INFORMATION CONTACT: Mary Jagiello, Program Manager, Detroit Airports District Office, Federal Aviation Administration, 11677 South Wayne Road, Romulus, Michigan 48174. Telephone Number (734) 229–2956 FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Springfield-Beckley Municipal Airport, Springfield, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Springfield, Clark County, Ohio, and described as follows:

Parcel 1–WDV–1 Description

Situated in the State of Ohio, County of Clark, Township of Green, being in the Northwest Quarter of Section 5 and in the Northeast and Southeast Quarters of Section 11, Township 4, Range 8, Miami River Survey, and being a part of:

1. That 37.15 acre tract and that 76.59 acre tract, both described in a deed to The City of Springfield, Ohio, of record in Official Record Volume 1761, page 2573,

2. that 2.17 acre tract and that 120 acre tract, both described in a deed to The City of Springfield, Ohio, of record in Deed Book 354, page 313,

3. and that 2.00 acre tract described in a deed to The City of Springfield, Ohio, of record in Official Record Volume 1872, page 1437,

all records referenced herein are on file at the Office of the Recorder for Clark County, Ohio, being a parcel of land located on the left and right sides of the proposed centerline of construction for Peacock Road, and on the left and right sides of the proposed centerline of construction for State Route 794, as shown on the centerline plat for CLA–794–0.60, of record in Plat Book 18, page 286, and said parcel being further bounded and described as follows:

Commencing for reference at an iron pin found at the northwest corner of said Section 5, being the northeast corner of said Section 11, being the southwest corner of Section 6, Township 4, Range 8, being the southeast corner of Section 12, Township 4, Range 8, said iron pin found being the northwest corner of said 37.15 acre tract, being the northeast corner of that 1.47 acre tract described in a deed to Larry E. Shaffer, of record in Official Record Volume 1778, page 73, being the southwest corner of that 18.79 acre tract described in two deeds to Nancy K. Saks & Daniel Saks (⅚ interest), of record in Official Record Volume 1862, page 116, and of record in Official Record Volume 1900, page 107, and described in a deed to Barbara Jean Meadows (⅙ interest), of record in Official Record Volume 998, page 40, said iron pin being at an angle point in the existing centerline of survey for Peacock Road, and said iron pin found being 234 feet left of Peacock Road proposed centerline of construction Station 204+37.70;

Thence South 85 degrees 11 minutes 07 seconds East, along the north line of said Section 5, along the south line of said Section 6, along the north line of said 37.15 acre tract and along the south line of said 18.79 acre tract, a distance of 606.98 feet to an iron pin set on the proposed northwest right-of-way line for said State Route 794, said iron pin set being 60.00 feet left of State Route 794 proposed centerline of construction Station 145+68.96, and said iron pin set being the TRUE POINT OF BEGINNING for the herein described right-of-way parcel;

Thence South 85 degrees 11 minutes 07 seconds East, continuing along the north line of said Section 5, the south line of said Section 6, the north line of said 37.15 acre tract and the south line of said 18.79 acre tract (passing the proposed centerline of construction for said State Route 794 at a distance of 154.03 feet, and the southeast corner of said 18.79 acre tract at a distance of 364.37 feet), a total distance of 408.59 feet to an iron pin set on the proposed southeast right-of-way line for said State Route 794, said iron pin set being on the south line of that 99.97 acre tract described in a deed to John C. Hayes, Trustee, of record in Official Record Volume 1504, page 2207, and said iron pin set being 60.00 feet right of State Route 794 proposed centerline of construction Station 149+61.75;

Thence southwest across said 37.15 acre tract, along the arc of a non-tangent

curve to the left, parallel to and 60.00 feet southeasterly from the proposed centerline of construction for said State Route 794, said curve having a radius of 1,146.23 feet, a central angle of 68 degrees 58 minutes 11 seconds, and an arc length of 1,379.77 feet to an iron pin set at a point of tangency, said iron pin set being 60.00 feet right of State Route 794 proposed centerline of construction Station 135+09.75, said curve being subtended by a long chord having a bearing of South 52 degrees 48 minutes 43 seconds West and a length of 1,297.96 feet,

Thence South 18 degrees 19 minutes 38 seconds West, continuing across said 37.15 acre tract, a distance of 69.05 feet to an iron pin set at a point, said iron pin set being 58.16 feet right of State Route 794 proposed centerline of construction Station 134+37.79;

Thence South 13 degrees 13 minutes 15 seconds West, continuing across said 37.15 acre tract, along a line parallel to and 60.00 feet southeasterly from the proposed centerline of construction for said State Route 794 (passing the existing east right-of-way way line for Peacock Road at a distance of 147.63 feet, passing the south line of said 37.15 acre tract and into said 2.00 acre tract at a distance of 203.26 feet, passing the existing centerline of survey for said Peacock Road and the west line of said 2.00 acre tract and into said 76.59 acre tract at a distance of 290.40 feet, and passing the existing west right-of-way line for said Peacock Road at a distance of 433.17 feet), a total distance of 1,008.74 feet to an iron pin set at a point, said point being 62.26 feet right of State Route 794 proposed centerline of construction Station 124+29.68;

Thence South 19 degrees 22 minutes 15 seconds West, across said 76.59 acre tract, a distance of 71.63 feet to an iron pin set at a point of curvature, said point being 60.00 feet right of State Route 794 proposed centerline of construction Station 123+61.70;

Thence continuing southwest across said 76.59 acre tract, along the arc of a curve to the right, parallel to and 60.00 feet southeasterly from the proposed centerline of State Route 794, said curve having a radius of 1,014.93 feet, a central angle of 69 degrees 26 minutes 28 seconds, (passing the existing north right of way line for said State Route 794 and the south line of said 76.59 acre tract and into said 2.17 acre tract at an arc length of 832.41 feet, passing the existing centerline of survey for said State Route 794 at an arc length of 936.68 feet, passing the south line of said 2.17 acre tract and into said 120 acre tract at an arc length of 951.27 feet, and passing the existing south right-of-way line for said State Route 794 at an arc length of 1,071.49 feet) a total arc length of 1,230.07 feet to an iron pin set at a point of tangency, said iron pin set being 60.00 feet right of State Route 794 proposed centerline of construction Station 112+04.35, said curve being subtended by a long chord having a bearing of South 54 degrees 05 minutes 29 seconds West and a length of 1,156.15 feet;

Thence South 88 degrees 48 minutes 43 seconds West, continuing across said 120 acre tract, a distance of 71.63 feet to an iron pin set at a point, said iron pin set being 62.26 feet right of State Route 794 proposed centerline of construction Station 111+36.37;

Thence North 85 degrees 02 minutes 17 seconds West, continuing across said 120 acre tract, along a line parallel to and 60.00 feet southerly from the centerline of survey and construction for said State Route 794, a distance of 389.32 feet to an iron pin set at a point, said iron pin set being 60.00 feet right of State Route 794 proposed centerline of construction Station 107+50.00;

Thence North 04 degrees 57 minutes 43 seconds East, continuing across said 120 acre tract, along a line perpendicular to the centerline of survey and construction for said State Route 794 (passing the existing south right-of-way line for said State Route 794 at a distance of 30.00 feet and passing the centerline of survey and construction for said State Route 794 at a distance of 60.00 feet), a total distance of 75,00 feet to A MAG nail set on the half section line for said Section 11, being on the north line of said 120 acre tract, being on the south line of that 1.53 acre tract described in a deed to Linda L. Black, Trustee or her Successor(s) as Trustees of ''The Phlips Keystone Inheritance Trust'', dated March 12, 2010, of record in Deed Book 1901, page 2209, said MAG nail set being 15.00 feet left. of State Route 794 proposed centerline of construction Station 107+50.00;

Thence South 85 degrees 02 minutes 17 seconds East, along the half-section line for said Section 11, along the north line of said 120 acre tract, and along the south line of said 1.53 acre tract, a distance of 167.78 feet to a MAG nail set at a southwest corner of said 76.59 acre tract, being the southeast corner of said 1.53 acre tract, said MAG nail set being 15.00 feet left of State Route 794 centerline of construction Station 109+17.78;

Thence North 08 degrees 42 minutes 47 seconds West, along a southwest line of said 76.59 acre tract, along the northeast line of said 1.53 acre tract, a distance of 46.31 feet to an iron pin set on the proposed north right-of-way line for said State Route 794, said iron pin set being 60.00 feet left of State Route 794 proposed centerline of construction Station 109+06.83;

Thence across said 76.59 acre tract along the following seven (7) described courses:

1. South 85 degrees 02 minutes 17 seconds East, along a line parallel to and 60.00 feet northerly from the centerline of survey and construction for said State Route 794, a distance of 226.04 feet to an iron pin set, said iron pin set being 57.91 feet left of State Route 794 proposed centerline of construction Station 111+35.65;

2. North 88 degrees 48 minutes 43 seconds East, a distance of 65.19 feet to an iron pin set at a point of curvature, said iron pin set being 60.00 feet left of State Route 794 proposed centerline of construction Station 112+04.35;

3. Northeast along the arc of a curve to the left, parallel to and 60,00 feet northwesterly from the proposed centerline of construction for said State Route 794, said curve having a radius of 894.93 feet, a central angle of 69 degrees 26 minutes 28 seconds, and an arc length of 1,084.63 feet to an iron pin set at a point of tangency, said iron pin set being 60.00 feet left of State Route 794 proposed centerline of construction Station 123+61.70, said curve being subtended by a long chord having a bearing of North 54 degrees 05 minutes 29 seconds East and a length of 1,019.46 feet;

4. North 19 degrees 22 minutes 15 seconds East, a distance of 65.19 feet to an iron pin set at a point, said iron pin set being 57.9.1 feet left of State Route 794 proposed centerline of construction Station 124+30.40;

5. North 13 degrees 13 minutes 15 seconds East, along a line parallel to and 60.00 feet northwesterly from the proposed centerline of construction for said State Route 794, a distance of 1,007.65 feet to an iron pin set at a point of tangency, said iron pin set being 61.95 feet left of State Route 794 proposed centerline of construction Station 134+38.38;

6. North 18 degrees 19 minutes 38 seconds East, a distance of 74.40 feet to an iron pin set at a point of curvature, said iron pin set being 60.00 feet left of State Route 794 proposed centerline of construction Station 135+09.75;

7. Northeast along the arc of a curve to the right, parallel to and 60.00 feet northwesterly from the proposed centerline of construction for said State Route 794, said curve having a radius of 1,266.23 feet, a central angle of 50 degrees 18 minutes 44 seconds, (passing the existing west right-of-way line for

said Peacock Road at an arc length of 143.33 feet, passing the existing centerline of survey for said Peacock Road and the east line of said 76.59 acre tract and into said 37.15 acre tract at an arc length of 199.37 feet, passing the existing east right-of-way line for said Peacock Road at an arc length of 249.89 feet, and passing the proposed centerline of construction for said Peacock Road at an arc length of 542.57 feet) a total arc length of 1,111.89 feet to the TRUE POINT OF BEGINNING for the herein described right-of-way parcel, said curve being subtended by a long chord having a bearing of North 43 degrees 29 minutes 00 seconds East and a length of 1,076.51 feet.

In the State of Ohio, County of Clark, Township of GreeAll that part of Section 19, Township 6 North, Range 10 West, Kent County, Michigan, described as follows: Commencing at a point 812.50 feet east of the southwest corner of the southeast ¼ of said Section 19, thence north 183 feet, thence east 100 feet, thence south 183 feet, thence west 100 feet to the point of beginning.

Parcel 1–WDV–2 Description

Situated in the State of Ohio, County of Clark, Township of Green, being in the Northwest Quarter of Section 5 and in the Southwest Quarter of Section 6, Township 4, Range 8, Miami River Survey, and being a part of that 73.16 acre tract described in a deed to The City of Springfield, Ohio, of record in Deed Book 449, page 237, and that 1.35 acre tract described to The City of Springfield, Ohio, of record in Deed Book 452, page 221, all records referenced herein are on file at the Office of the Recorder for Clark County, Ohio, being a parcel of land located on the left and right sides of the proposed centerline of construction for State Route 794, as shown on the centerline plat for CLA–794–0.60, of record in Plat Book 18, page 286, and said parcel being further bounded and described as follows:

Commencing for reference at an iron pin found at the northwest corner of said Section 5, being the southwest corner of said Section 6, said iron pin being at an angle point in the existing centerline of survey for Peacock Road, and said iron pin found being 2.34 feet left of Peacock Road proposed centerline of construction Station 204+37.70;

Thence South 85 degrees 11 minutes 07 seconds East, along the north line of said Section 5, along the south line of said Section 6 (passing the northeast corner of said 73.16 acre tract at a distance of 3,589.25 feet) a total distance of 3,688.4.4 feet to a point on the existing northwest right-of-way line for said State Route 794, said point being the east corner of said 1.35 acre tract, said corner being a southerly corner of that 110.789 acre tract described in a deed to Ruth Y. Young, of record in Official Record 1416, page 1572, and described in a deed to Security National Bank of Springfield nka Security National Bank and Trust Company, ITE of the Herbert A. Young Trust u/d of February 5, 1991, as amended (½ interest), of record in Official Record Volume 1887, page 2365, (reference an iron pin found with a cap stamped ''Sutton'' North 85 degrees 11 minutes 07 seconds West at a distance of 3,686.86 feet), said point being 73.98 feet right of State Route 794 proposed centerline of construction Station 176+64.69;

Thence South 85 degrees 11 minutes 07 seconds East, continuing along the north line of said Section 5 and the south line of said Section 6, along the north line of said 73.16 acre tract, and along the south line of said 1.35 acre tract, a distance of 72.01 feet to an iron pin set on the proposed southwest right-of-way line for said State Route 794, said iron pin set being 60.00 feet right of State Route 794 proposed centerline of construction Station 177+35.34, and said iron pin set being the TRUE POINT OF BEGINNING for the herein described right-of-way parcel; Thence across said 1.35 acre tract along the following four (4) described courses:

1. North 73 degrees 59 minutes 44 seconds West, along a line parallel to and 60.00 feet southwesterly from the proposed centerline of construction for said State Route 794, a distance of 37.91 feet to an iron pin set on the existing northwest right-of-way line for said State Route 794, being the northwest line of said 1.35 acre tract, and being the southeast line of said 110.789 acre tract, said iron pin set being 60.00 feet right of State Route 794 proposed centerline of construction Station 176+97.43;

2. Northeasterly along the arc of a curve to the right, along the existing northwest right-of-way line for said State Route 794, along the northwest line of said 1.35 acre tract, and along the southeast line for said 110.789 acre tract, said curve having a radius of 1,677.20 feet, a central angle of 11 degrees 19 minutes 21 seconds (passing the proposed centerline of construction for said State Route 794 at an arc length of 180.45 feet), a total arc length of 331.44 feet to a point of tangency (reference a concrete monument found South 66 degrees 20 minutes 42 seconds West at a distance of 0.24 feet), said point being 30.17 feet left of State Route 794 proposed centerline of construction Station 180+16.84, said curve being subtended by a long chord having a bearing of North 89 degrees 09 minutes 12 seconds East and a length of 330.90 feet;

3. South 85 degrees 11 minutes 07 seconds East, along the existing north right-of-way line for said State Route 794, along the north line of said 1.35 acre tract, and along a south line of said 110.789 acre tract, a distance of 327.65 feet to an iron pin set at the intersection of the northeast line of said 73.16 acre tract projected north, said iron pin set being 40.00 feet left of State Route 794 proposed centerline of construction Station 183+48.19;

4. South 25 degrees 15 minutes 14 seconds East, along the northeast line of said 73.16 acre tract projected north, a distance of 46.22 feet to a point on the centerline of survey and construction for said State Route 794, being on the south line of said 1.35 acre tract, said point being the northeast corner of said 73.16 acre tract and the northwest corner of that 1.25 acre tract described in a deed to The City of Springfield, Ohio, of record in Deed Book 450, page 164, and said point being at State Route 794 proposed centerline of construction Station 183+71.34;

Thence South 25 degrees 15 minutes 14 seconds East, along the northeast line of said 73.16 acre tract, along the southwest line of said 1.25 acre tract (passing the existing south right-of-way line for said State Route 794, the southwest corner of said 1.25 acre tract, and the northwest corner of that 30.02 acre tract described in a deed to The City of Springfield, Ohio, of record in Deed Book 535, page 558 at a distance of 46.22 feet), along the southwest line of said 30.02 acre tract, a total distance of 69.33 feet to an iron pin set, said iron pin set being 60.00 feet right of State Route 794 proposed centerline of construction Station 184+06.08;

Thence across said 73.16 acre tract along the following three (3) described courses:

1. North 85 degrees 11 minutes 07 seconds West, along a line parallel to and 60.00 feet southerly from the centerline of survey and construction for said State Route 794, a distance of 208.09 feet to an iron pin set, said iron pin set being 60.00 feet right of State Route 794 proposed centerline of construction Station 181+97.99;

2. Northwesterly along the arc of a curve to the right, parallel to and 60.00 feet southwesterly from the proposed centerline of construction for said State route 794, said curve having a radius of 1,697.02 feet, a central angle of 11 degrees 11 minutes 23 seconds (passing the existing south right-of-way line at an arc length of 250.06 feet), a total arc length of 331.42 feet to an iron pin set at a point of tangency, said iron pin set being 60.00 feet right of State Route 794 proposed centerline of construction Station 178+78.29, said curve being subtended by a long chord having a bearing of North 79 degrees 35 minutes 25 seconds West and a length of 330.90 feet;

3. North 73 degrees 59 minutes 44 seconds West, along a line parallel to and 60.00 feet southwesterly from the proposed centerline of construction for said State Route 794 (passing the existing centerline of survey for said State Route 794 at a distance of 67.66 feet), a total distance of 142.94 feet to the

TRUE POINT OF BEGINNING for the herein described right-of-way parcel.

The above described right-of-way parcel contains an area of 1.209 acres (including a total of 1.038 acres within the present road occupied), of which 0.680 acres lies within Clark County Auditor's tax parcel number 1001100005000013 (including 0.509 acres within the present road occupied), and 0.529 acres with no tax parcel number (all of which lies within present road occupied).

The bearings described herein are based on the bearing of South 85 degrees 11 minutes 07 seconds East for the north line of Section 5, Township 4, Range 8, Miami River Survey, which is referenced to the Ohio State Plane Coordinate System, South Zone, and the North American Datum of 1983 (CORS96 Adjustment), as established utilizing a GPS survey performed by American Structurepoint, Inc. in March 2009, and an NGS OPUS solution (file number 0911340480) that was based on CORS Stations ''OHCL'', ''OHMD'' and ''OH:FA''.

Iron pins referenced as set are ⅝ inch by 30 inch long rebar with yellow plastic caps stamped ''ASI PS–8438'' and are set after construction activities are completed.

The above description of a right-of-way parcel was prepared and reviewed on October 14, 2010 by Brian P. Bingham, Professional Surveyor Number 8438, is based on an actual field survey performed in March 2009 by American Structurepoint, Inc., meets the requirements of the ''Minimum Standards for Boundary Surveys'' described in Ohio Revised Code Chapter 4733–37, and is true and correct to the best of my knowledge.

Parcel 1–WDV–3 Description

Situated in the State of Ohio, County of Clark, Township of Green, being in the Northwest Quarter of Section 5, Township 4, Range 8, Miami River Survey, and being a part of that 37.15 acre tract described in a deed to The City of Springfield, Ohio, of record in Official Record Volume 1761, page 2573, being a parcel of land located on the left and right sides of the proposed centerline of construction for Peacock Road, being on the left side of the proposed centerline of construction for State Route 794, both as shown on the centerline plat for CLA–794–0.60, of record in Plat Book 18, page 286, said parcel being further bounded and described as follows:

Beginning at an iron pin found at the northwest corner of said Section 5, being the northeast corner of Section 11, Township 4, Range 8, being the southwest corner of Section 6, Township 4, Range 8, being the southeast corner of Section 12, Township 4, Range 8, said iron pin found being the northwest corner of said 37.15 acre tract, being the northeast corner of that 1.47 acre tract described in a deed to Larry E. Shaffer, of record in Official Record Volume 1778, page 73, being the southwest corner of that 18.79 acre tract described in two deeds to Nancy K. Saks & Daniel Saks (⅚ interest), of record in Official Record Volume 1862, page 116 and in Official Record Volume 1900, page 107, and described in a deed to Barbara Jean Meadows (⅙ interest), of record in Official Record Volume 998, page 40, said iron pin found being at an angle point in the existing centerline of survey for Peacock Road, and said iron pin found being 2.34 feet left of Peacock Road proposed centerline of construction Station 204+37.70;

Thence South 85 degrees 11 minutes 07 seconds East, along the north line of said Section 5 and said 37.15 acre tract, along the south line of said Section 6 and said 18.79 acre tract, a distance of 42.69 feet to an iron pin set at a point, said iron pin set being 40.00 feet right of Peacock Road proposed centerline of construction Station 204+31.85;

Thence across said 37.15 acre tract along the following seven (7) described courses:

1. Southeast parallel to and 40.00 feet northeasterly from the proposed centerline of construction for said Peacock Road, along the arc of a non-tangent curve to the left, said curve having a radius of 273.95 feet, a central angle of 40 degrees 31 minutes 19 seconds, and an arc length of 193.75 feet to an iron pin set at a point of tangency, said iron pin set being 40.00 feet right of Peacock Road proposed centerline of construction Station 202+09.82, said curve being subtended by a long chord having a bearing of South 23 degrees 22 minutes 30 second East and a length of 189.74 feet;

2. South 43 degrees 38 minutes 10 seconds East, along a line parallel to and 40.00 feet northeasterly from the proposed centerline for said Peacock Road, a distance of 121.71 feet to an iron pin set at a point of curvature, said iron pin set being 88.73 feet left of State Route 794 proposed centerline of construction Station 141+37.27;

3. East along the arc of a curve to the left, said curve having a radius of 30.00 feet, a central angle of 86 degrees 54 minutes 16 seconds, and an arc length of 45.50 feet to an iron pin set at a point of cusp on the proposed northwest right-of-way line for State Route 794, said iron pin set being 60.00 feet left of State Route 794 proposed centerline of construction Station 141+65.17, said curve being subtended by a long chord having a bearing of South 87 degrees 05 minutes 18 seconds East and a length of 41.26 feet;

4. Southwest along the proposed northwest right-of-way line for said State Route 794, parallel to and 60.00 feet northwest of the centerline of construction for said State Route 794, along the arc of a curve to the left, said curve having a radius of 1,266.23 feet, a central angle of 06 degrees 11 minutes 29 seconds, and an arc length of 136.83 feet to an iron pin set at a point of cusp, said iron pin set being 60.00 feet left of State Route 794 proposed centerline of construction Station 140+34.83, said curve being subtended by a long chord having a bearing of South 46 degrees 21 minutes 50 seconds West and a length of 136.76 feet;

5. North along the arc of a curve to the left, said curve having a radius of 30.00 feet, a central angle of 86 degrees 54 minutes 16 seconds, and an arc length of 4530 feet to an iron pin set at a point of tangency, said iron pin set being 88.73 feet left of State Route 794 proposed centerline of construction Station 140+62.73, said curve being subtended by a long chord having a bearing of North 00 degrees 11 minutes 02 seconds West and a length of 41.26 feet;

6. North 43 degrees 38 minutes 10 seconds West, (along a line parallel to and 40.00 feet southwesterly from the proposed centerline of construction for a distance of 121.71 feet), a total distance of 162.11 feet to an iron pin set, said iron pin set being 42.30 feet left of Peacock Road proposed centerline of construction Station 202+45.49;

7. North 84 degrees 49 minutes 54 seconds West, (passing the existing east right-of-way line for said Peacock Road at a distance of 30.26 feet), a total distance of 50.26 feet to a railroad spike found on the existing centerline of survey for said Peacock Road, being on the west line of said 37.15 acre tract and said Section 5, being on the east line of said Section 11, being the southeast corner of said 1.47 acre tract, and being a northeast corner for that 76.59 acre tract described in a deed to The City of Springfield, Ohio, of record in Official Record Volume 1761, page 2573, and said point being 80.93 feet left of Peacock Road proposed centerline of construction Station 202+72.42;

Thence North 05 degrees 10 minutes 06 seconds East, along the existing centerline of survey for said Peacock Road, along the west line of said 37.15 acre tract and said Section 5, along the east line of said 1.47 acre tract and said Section 11, a distance of 200.00 feet to the POINT OF BEGINNING for the herein described right-of-way parcel.

The above described right-of-way parcel contains 0.679 acres within Clark County Auditor's tax parcel number 1001100005000001 (including 0.092 acres within the present road occupied).

The bearings described herein are based on the bearing of South 85 degrees 11 minutes 07 seconds East for the north line of Section 5, Township 4, Range 8, Miami River Survey, which is referenced to the Ohio State Plane Coordinate System, South Zone, and the North American Datum of 1983 (CORS96 Adjustment), as established

utilizing a GPS survey performed by American Structurepoint, Inc. in March 2009, and an NGS OPUS solution (file number 09–11340480) that was based on CORS Stations ''OHCL'', ''OHMD'' and ''OHFA''.

Iron pins referenced as set are 5/8 inch by 30 inch long rebar with yellow plastic caps stamped ''ASI PS–8438'' and are set after construction activities are completed.

The above description of a right-of-way parcel was prepared and reviewed on January 19, 2011 by Brian P. Bingham, Professional Surveyor Number 8438, is based on an actual field survey performed in March 2009 by American Structurepoint, Inc., meets the requirements of the ''Minimum Standards for Boundary Surveys'' described in Ohio Revised Code Chapter 4733–37, and is true and correct to the best of my knowledge.

Issued in Romulus, Michigan, on August 2, 2012.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2012–20141 Filed 8–15–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Actions on Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on Special Permit Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on special permits applications in (July to July 2012). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on August 7, 2012.

Donald Burger,

Chief, Special Permits and ii ovals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT GRANTED			
15258–M	Air Products and Chemicals, Inc. Tamaqua, PA.	49 CFR 180.205 and 173.302a.	To modify the special permit to authorize additional cylinders which may be tested by the untrasonic test method.
14175–M	The Linde Group, Murray Hill, NJ.	49 CFR 180.209	To modify the special permit to authorize additional Division 2.2 gases.
14924–M	Explosive Service International Ltd., Baton Rouge, LA.	49 CFR 176.144(e), § 176.145(b), § 176.137(b)(7), § 176.63(e), § 176.83; § 176.116(e); § 176.120; § 176.138(b); § 176.164(e); § 176.178(b).	To modify the special permit to waive the requirement for a fire pump under § 176.64(e).
15220–M	GasCon (Pty) Ltd, Cape Town, South Africa.	49 CFR 178.274(b) 178.277(b)(1).	To modify the special permit to increase the water capacity from 17000 liters (4500 USWG) liters min; to 45000 liters (11888 USWG) max.
11458–M	Costco Wholesale, Issaquah, WA.	49 CFR 172.203(a) and 173.156(b).	To modify the special permit to authorize transportation in commerce as a limited quantity in addition to ORM–D.
10232–M	ITW Sexton, Deccatur, AL	49 CFR 173.304, 178.33(a)	To modify the special permit to authorize a higher burst pressure.
14978–M	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.181(c)(1)	To modify the special permit by removing the references to the drawings of the inner packaging.
11836–M	Hydrite Chemical Co., Brookfield, WI.	49 CFR 173.24; 173.203	To modify the special permit by authorizing use of a UN 3H1 drum.
15661–M	Pyrotechnique by Grucci (PbG) Brookhaven, NY.	49 CFR, 49 CFR 173.52, 49 CFR 173.50.	To modify the special permit by authorizing additional containers of unapproved fireworks to be transported.
NEW SPECIAL PERMIT GRANTED			
15515–N	National Aeronautics and Space Administration (NASA) Houston, TX.	49 CFR 173.302a, 173.301(0(1), 173.301(h)(3), 173.302(f)(2) and 173.302(f)(4).	To authorize the transportation in commerce of a non-DOT specification cylinder further packed in an ATA–300 Category 1 outer packaging. (modes 1, 2, 3, 4).
15593–N	ITW Sexton, Decatur, AL	49 CFR 173.304a(d)(3), 178.33(a)(8).	To authorize the manufacture, marking and sale of a non-DOT specification container to be used for the transportation in commerce of UN 1075. (modes 1, 2, 3, 4).
15615–N	American Promotional Events, Inc.—East d/b/a TNT Fireworks Florence, AL.	49 CFR 171.8	To authorize the transportation in comerce of UNO336 Fireworks in UN4G packaging with a capacity greater than 450 liters. (mode 1).
15617–N	Veolia ES Technical Solutions, L.L.C. Flanders, NJ.	49 CFR 173.192, § 177.848	To authorize the transportation in commerce of waste phosgene in alternative packaging being transported to a disposal facility without meeting the segregation requirements for Division 2.3 gas Zone A materials within the transport vehicle. (mode 1).

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
15666–N	The Procter & Gamble Manufacturing Company West Chester, OH.	49 CFR 49 CFR 172.101, Appendix B, Paragraph 5.	Request to except a marine pollutant from being regulated as a marine pollutant. (modes 1, 2, 3, 4, 5).
EMERGENCY SPECIAL PERMIT GRANTED			
15652–N	Vertical Solutions LLC, Valdez, AK.	49 CFR 172.101 Column(9B), 172.204(c)(3), 173.27(b)(2), 172.200, 172.300, Part 173, 175.30(a)(1) and 175.75.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4).
15665–N	Airgas Nor Pac Vancouver, WA.	49 CFR 173.3(e)	To authorize the transportation in commerce of a DOT Specification 4AA cylinder containing anhydrous ammonia that developed a leak and is equipped with a Chlorine Institute Kit "A" to prevent leakage during transportation. (mode 1).
15667–N	Volga Dnepr—UNIQUE AIR CARGO, Inc Ulyanovsk.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27, and 175.30(a)(1).	To authorize the transportation in commerce of certain Division 1.2 explosives that are forbidden for transportation by cargo only aircraft (mode 4).
NEW SPECIAL PERMIT WITHDRAWN			
15494–N	Johnson Controls Battery Group, Inc., Milwaukee, WI.	49 CFR 173.159	To authorize the transportation in commerce of certain actively leaking lead acid batteries in a special overpack by motor vehicle. (mode 1).
DENIED			
15553–N	Request by Best Sanitizers, Inc. Walton, KY July 25, 2012. To authorize the transportation of non-bulk combination packages of medical grade instrument sanitizer and disinfectant materials using custom inner packagings placed within a strong outer fiberboard box.		
15621–N	Request by Pacific Consolidated Industries, LLC Riverside, CA July 25, 2012. To authorize the transportation in commerce of brass-lined filament wound cylinders identified as Mobile Oxygen Storage Tanks filled with certain Division 2.1 and 2.2 gases.		
15643–N	Request by Hunter Well Science Arlington, TX July 25, 2012. To authorize the transportation in commerce Sulfur hexafluoride, UN 1080 as limited quantity in a non-specification cylinder.		
15662–N	Request by Department of State Washington, DC July 13, 2012. To authorize transportation in commerce of batteries without externally marking the outer package.		

[FR Doc. 2012–19832 Filed 8–15–12; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on August 7, 2012.

Donald Burger,
Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
14372–M	Kidde Aerospace and Defense, Wilson, NC	3	10–31–2012

Application No.	Applicant	Reason for delay	Estimated date of completion
New Special Permit Applications			
15080–N	Alaska Airlines, Seattle, WA	4	10–31–2012
15334–N	Floating Pipeline Company Incorporated, Halifax, Nova Scotia	3	09–30–2012
15504–N	FIBA Technologies, Inc., Millbury, MA	3	10–31–2012
15552–N	POLY-COAT Systems, Inc., Liverpool, TX	4	10–31–2012
15558–N	3M Company, St. Paul, MN	4	10–31–2012
15568–N	ATK Launch Systems, Corinne, UT	3	10–31–2012
Party to Special Permits Application			
15537–P	Austin Powder Company, Cleveland, OH	4	10–31–2012
14372–P	L'Hotellier, France	3	10–31–2012
13548–P	Interstate Battery System of The Redwoods, Eureka, CA	4	10–31–2012
Renewal Special Permits Applications			
12412–R	Carolina Pool Management, Charlotte, NC	3	10–31–2012
11136–R	Alaska Pyrotechnics, Anchorage, AK	3	10–31–2012
14313–R	Airgas, Inc., Radnor, PA	3	12–31–2012
12283–R	Interstate Battery of Alaska, Anchorage, AK	4	09–30–2012

[FR Doc. 2012–19830 Filed 8–15–12; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comment concerning a proposed new regulatory reporting requirement for national banks and Federal savings associations titled, ''Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' The proposal describes the scope of reporting and the proposed reporting requirements.

DATES: Comments must be received by October 15, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–NEW, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–NEW, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219. In addition, copies of the templates referenced in this notice can be found on the OCC's Web site under News and Issuances (*http://occ.gov/news-issuances/index-news-issuances.html*).

SUPPLEMENTARY INFORMATION: The OCC is requesting comment on the following new proposed information collection:

Title: Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

OMB Control No.: 1557–NEW.

Description: Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (Dodd-Frank Act) requires certain financial companies, including national banks and Federal savings associations, to conduct annual stress tests [2] and requires the primary financial regulatory agency [3] of those financial companies to issue regulations implementing the stress test requirements.[4] A national bank or Federal savings association is a ''covered institution'' and therefore subject to the stress test requirements if its total consolidated assets are more than $10 billion. Under section 165(i)(2), a covered institution is required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.[5] On January 24, 2012, the OCC published in the **Federal Register** a notice of proposed rulemaking (NPR) implementing the section 165(i)(2) annual stress test requirement.[6] This notice describes the reports and information required to meet the reporting requirements under section

[1] Public Law 111–203, 124 Stat. 1376, July 2010.
[2] 12 U.S.C. 5365(i)(2)(A).
[3] 12 U.S.C. 5301(12).
[4] 12 U.S.C. 5365(i)(2)(C).
[5] 12 U.S.C. 5365(i)(2)(B).
[6] 77 FR 3408, Jan. 24, 2012.

165(i)(2). These information collections will be given confidential treatment (5 U.S.C. 552(b)(4)).

The OCC intends to use the data collected through this proposal to assess the reasonableness of the stress test results of covered institutions and to provide forward-looking information to the OCC regarding a covered institution's capital adequacy. The OCC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered institution. The stress test results are expected to support ongoing improvement in a covered institution's stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The Dodd-Frank Act stress testing requirements apply to all covered institutions, but the OCC recognizes that many covered institutions with consolidated total assets of $50 billion or more have been subject to stress testing requirements under the Board's Comprehensive Capital Analysis and Review (CCAR). The OCC also recognizes that these institutions' stress tests will be applied to more complex portfolios and therefore warrant a broader set of reports to adequately capture the results of the company-run stress tests. These reports will necessarily require more detail than would be appropriate for smaller, less complex institutions. Therefore, the OCC has decided to specify separate reporting templates for covered institutions with total consolidated assets between $10 and $50 billion and for covered institutions with total consolidated assets of $50 billion or more. In cases where a covered institution with assets less than $50 billion is affiliated with an organization with assets of $50 billion or more, the OCC reserves the authority to require that covered institution to use the reporting template for larger institutions. The OCC may also, on a case-by-case basis, require a covered institution with assets over $50 billion to report stress test results using a simpler format to be specified by the OCC. The reporting templates for institutions with assets of $50 billion or more are described below.

The OCC has worked closely with the Board and the Federal Deposit Insurance Corporation (FDIC) to make the agencies' respective rules implementing annual stress testing under the Dodd-Frank Act consistent and comparable by requiring similar standards for scope of application, scenarios, data collection and reporting forms. The OCC has worked to minimize any potential duplication of effort related to the annual stress test requirements. The OCC also recognizes that many covered institutions with total consolidated assets of $50 billion or more are required to submit reports using CCAR reporting form FR Y–14A.[7] Therefore, the OCC is proposing to base reporting requirements closely on the Board's form FR Y–14A for covered institutions with total consolidated assets of $50 billion or more. The OCC recognizes the Board has a proposal to modify the FR Y–14A out for comment and, to the extent practical, the OCC will keep its reporting requirements consistent with the Board's FR Y–14A in order to minimize burden on covered institutions.[8]

Description of Reporting Templates for Institutions With $50 Billion or More in Assets

The OCC DFAST–14A Summary Schedule includes data collection worksheets necessary for the OCC to assess the company-run stress test results for baseline, adverse and severely adverse scenarios as well as any other scenario specified in accordance with regulations specified by the OCC. The DFAST–14A Summary Schedule includes worksheets that collect information on the following areas:

1. Income Statement;
2. Balance Sheet;
3. Capital Statement;
4. Retail Risk;
5. Securities: Available-for-Sale/Held to Maturity (AFS/HTM);
6. Trading;
7. Counterparty Credit Risk;
8. Operational Risk; and
9. Pre-Provision Net Revenue (PPNR).

Each covered institution reporting to the OCC using this form will be required to submit to the OCC a separate DFAST–14A Summary Schedule for each scenario provided to covered institutions in accordance with regulations implementing Section 165(i)(2) as specified by the OCC.

Worksheets: Income Statement

This income statement worksheet collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on projected losses and revenues in the following categories.

1. Loan losses;
2. Losses due to contingent commitments and liabilities;
3. Other Than Temporary Impairments (OTTI) on assets held to maturity and available for sale;
4. Trading account losses;
5. Allowance for loan and lease losses;
6. Pre-provision net revenue; and
7. Repurchase reserve/liability for reps and warranties.

This schedule provides information used to assess losses that covered institutions can sustain in adverse and severely adverse stress scenarios.

Worksheets: Balance Sheet

The balance sheet worksheet collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on projected equity capital, as well as on assets and liabilities in the following categories.

1. HTM Securities;
2. AFS Securities;
3. Loans;
4. Trading Assets;
5. Intangibles;
6. Deposits; and
7. Trading Liabilities.

The OCC intends to use this worksheet to assess the projected changes in assets and liabilities that a covered institution can sustain in an adverse and severely adverse stress scenario. This worksheet will also be used to assess the revenue and loss projections identified in the income statement worksheet.

Worksheets: Capital

The capital worksheet collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on the following areas.

1. Changes to Equity Capital;
2. Changes to Regulatory Capital; and
3. Capital Actions.

The OCC intends to use this worksheet to assess the impact on capital of the projected losses and projected changes in assets that the covered institution can sustain in a stressed scenario. In addition to reviewing the worksheet in the context of the balance sheet and income statement projections, the OCC also intends to use this worksheet to assess the adequacy of the capital plans and capital planning processes for each covered institution.

Worksheets: Retail Projections

The retail projections worksheets collect data for each quarter of the planning horizon for the stress test on projected balances and losses for major retail portfolios: Residential real estate, credit card, automobile, student loans,

[7] *http://www.federalreserve.gov/reportforms.*

[8] 77 FR 40051, July 6, 2012.

small business loans, and other consumer. For residential real estate, the worksheets collect data for first lien mortgages, home equity lines of credit, and home equity loans. For all major retail portfolios, the worksheets contain separate segments for domestic and international loans for various product types. Within each broad product-type segment, the reporting for the portfolio is divided into a number of sub-segments that embody unique risk characteristics. This modular product-type design of the retail worksheet allows for a targeted data collection that encompasses only the material portfolios in a given product area for a particular covered institution. A covered institution would be required to complete only the segments and sub-segments material for that institution. This design is intended to limit burden while maximizing the supervisory information produced from the collection.

Worksheets: Securities

Several securities worksheets collect data related to Available-for-Sale (AFS) and Held-to-Maturity (HTM) securities. The worksheets collect data and information such as: Projected other-than-temporary impairment (OTTI) by asset class for each quarter of the forecast time horizon; methodologies and assumptions used to generate the OTTI projections for each asset class; projected stressed fair market value (FMV) for each asset class as well as qualitative information on the methodologies and assumptions used to generate the stressed market value; and actual FMV including the source (vendor or proprietary) and key assumptions used in determining market values (if using a proprietary model).

Worksheets: Trading and Counterparty Risk

The trading and counterparty risk worksheets collect projected losses associated with a specified global market risk shock from covered institutions with large trading operations. The OCC provides a set of hypothetical shocks to the risk factors most relevant to the trading and counterparty positions of respondent covered institutions.

Worksheets: Operational Risk

The operational risk worksheets collect data on covered institutions' projections of operational losses for each quarter of planning horizon for the stress test. Operational losses are defined as losses arising from inadequate or failed internal processes, people, and systems or from external events including legal losses. Some examples of operational loss events are losses related to improper business practices (including class action lawsuits), execution errors, and fraud. Additional detail may be requested in order for the OCC to evaluate the transformation of the covered institutions' historical loss experience into operational loss projections. Additional detail also may be requested on any budgeting processes used to project operational losses.

Completion of the operational risk worksheets would be required only for those institutions subject to advanced approaches risk-based capital rules.

Worksheets: PPNR

For the PPNR worksheets, covered institutions must provide projections for the three major components of PPNR (net interest income, non-interest income, and non-interest expense) for each quarter of the planning horizon. Collection of these data in this format is based on the assumption that the revenues generated by different business lines are affected differently by different stress scenarios, and such a view facilitates a more robust analysis of the resulting projections.

Description of OCC DFAST–14A Counterparty Credit Risk Template

The counterparty credit risk (CCR) template collects, on various worksheets, data to identify credit valuation adjustment (CVA), exposures, and CVA sensitivities for the covered institution's top counterparties along a number of dimensions, including current CVA, stressed CVA, net current exposure, and gross current exposure. Covered institutions also must submit aggregate CVA, exposures, and CVA sensitivities by ratings categories. The *Notes to the CCR Schedule* worksheet allows covered institutions to voluntarily submit additional information to provide clarity to the portfolio. Covered institutions are required to report results under two scenarios (adverse, severely adverse) and two specifications (Covered Institution, OCC) to capture Expected Exposure profiles.

Completion of the Counterparty Credit Risk template would be required only for those institutions subject to the market shock provided by the OCC.

Description of OCC DFAST–14A Basel III Capital Template

The Basel III capital template collects projections of Tier 1 Common Equity, Tier 1 Capital, Risk-Weighted Assets (RWA), and Leverage Exposures (along with granular components of those elements) for each quarter of the planning horizon for the stress test under baseline, adverse and severely adverse scenarios, based on the Basel III framework promulgated by the Basel Committee on Bank Supervision. Covered institutions also are required to include data on the projected impact of any significant actions planned in response to Basel III and the Dodd-Frank Act (for example, asset sales, asset wind-downs, and data collection and modeling enhancements).

Description of OCC DFAST–14A Company Variables Template

To conduct the stress test required under this rule, a covered institution may need to project additional economic and financial variables to estimate losses or revenues for some or all of its portfolios. In such a case, the covered institution is required to complete the DFAST–14A Company Variables worksheet for each scenario where such additional variables are used to conduct the stress test. Each scenario worksheet collects the variable name (matching that reported on the Scenario Variable Definitions worksheet), the actual value of the variable during the third quarter of the reporting year, and the projected value of the variable for nine future quarters.

Description of Supporting Documentation

Covered institutions must submit clear documentation in support of the projections included in the worksheets to support efficient and timely review of annual stress test results by the OCC. The supporting documentation should be submitted electronically and is not expected to be reported in the workbooks used for required data reporting. This supporting documentation must clearly describe the methodology used to produce the stress test projections, and must include how the macroeconomic factors were translated into a covered institution's projections, as well as technical details of any underlying statistical methods used. Where company-specific assumptions are made that differ from the broad macro-economic assumptions incorporated in stress scenarios provided by the OCC, the documentation must also describe such assumptions and how those assumptions relate to reported projections. Where historical relationships are relied upon, the covered institutions must describe the historical data and provide the basis for the expectation that these relationships would be maintained in each scenario,

particularly under adverse and severely adverse conditions.

Type of Review: New collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden: 9,600 hours.

The OCC recognizes the Board has estimated 79,200 hours for bank holding companies to prepare their systems for submitting data for the FR Y–14.[9] The OCC believes that these systems will also be used to submit data for the reporting templates described in this notice.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.*Comments are invited on:*

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

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

Dated: August 10, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–20083 Filed 8–15–12; 8:45 am]

BILLING CODE 4810–33–P

[9] Board of Governors of the Federal Reserve System, *OMB Supporting Statement for the Capital Assessments and Stress Testing information collection* (FR Y–14A/Q/M; OMB No. 7100–0341), p. 22.

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting Amendment

The Department of Veterans Affairs (VA) is announcing an amendment to the notice of meeting of the Advisory Committee on Women Veterans on August 20–24, 2012, in the Dennis Auditorium, 2B–137, at the VA Maryland Health Care System, 10 North Green Street, Baltimore, MD, from 8:30 a.m. until 4:30 p.m. each day. This meeting was announced in the **Federal Register** on Monday, August 13, 2012, (77 FR 156). Any member of the public wishing to attend or seeking additional information should contact Ms. Middleton at (202) 461–6193 and not (202) 273–7092 as previously provided.

Dated: August 13, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–20160 Filed 8–15–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 159 August 16, 2012

Part II

Environmental Protection Agency

40 CFR Parts 60 and 63

Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2010–0505; FRL–9665–1]

RIN 2060–AP76

Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the review of new source performance standards for the listed oil and natural gas source category. In this action the EPA revised the new source performance standards for volatile organic compounds from leaking components at onshore natural gas processing plants and new source performance standards for sulfur dioxide emissions from natural gas processing plants. The EPA also established standards for certain oil and gas operations not covered by the existing standards. In addition to the operations covered by the existing standards, the newly established standards will regulate volatile organic compound emissions from gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers and storage vessels. This action also finalizes the residual risk and technology review for the Oil and Natural Gas Production source category and the Natural Gas Transmission and Storage source category. This action includes revisions to the existing leak detection and repair requirements. In addition, the EPA has established in this action emission limits reflecting maximum achievable control technology for certain currently uncontrolled emission sources in these source categories. This action also includes modification and addition of testing and monitoring and related notification, recordkeeping and reporting requirements, as well as other minor technical revisions to the national emission standards for hazardous air pollutants. This action finalizes revisions to the regulatory provisions related to emissions during periods of startup, shutdown and malfunction.

DATES: This final rule is effective on October 15, 2012. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 15, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID. No. EPA–HQ–OAR–2010–0505. 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 Number 3334, 1301 Constitution Avenue NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information about this final action, contact Mr. Bruce Moore, Sector Policies and Programs Division (E143–05), Office of Air Quality and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5460; facsimile number: (919) 685–3200; email address: *moore.bruce@epa.gov*. For additional contact information, see the following **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: For specific information regarding risk assessment and exposure modeling methodology, contact Mr. Mark Morris, Health and Environmental Impacts Division (C504–06), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541–5416; fax number: (919) 541–0840; and email address: *morris.mark@epa.gov*.

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I. Preamble Acronyms and Abbreviations

Several acronyms and terms used to describe industrial processes, data inventories and risk modeling are included in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

API American Petroleum Institute
BACT Best Available Control Technology
BDT Best Demonstrated Technology
bpd Barrels Per Day
BMP Best Management Practice
BSER Best System of Emission Reduction
BTEX Benzene, Ethylbenzene, Toluene and Xylene
CAA Clean Air Act
CBM Coal Bed Methane
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CO Carbon Monoxide
CO_2 Carbon Dioxide
CO_2e Carbon Dioxide Equivalent
DOE United States Department of Energy
e-GGRT Electronic Greenhouse Gas Reporting Tool
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guidelines
ERT Electronic Reporting Tool
GCG Gas Condensate Glycol
GHG Greenhouse Gas
GOR Gas to Oil Ratio
GWP Global Warming Potential
HAP Hazardous Air Pollutants
HEM–3 Human Exposure Model, version 3
HI Hazard Index
HP Horsepower
HQ Hazard Quotient
H_2S Hydrogen Sulfide
ICR Information Collection Request
IPCC Intergovernmental Panel on Climate Change
IRIS Integrated Risk Information System
km Kilometer
kW Kilowatts
LAER Lowest Achievable Emission Rate
lb Pounds
LDAR Leak Detection and Repair
MACT Maximum Achievable Control Technology
MACT Code NEI code used to identify processes included in a source category
Mcf Thousand Cubic Feet
Mg/yr Megagrams per year
MIR Maximum Individual Risk
MIRR Monitoring, Inspection, Recordkeeping and Reporting
$MMtCO_2e$ Million Metric Tons of Carbon Dioxide Equivalents
NAAQS National Ambient Air Quality Standards
NAC/AEGL National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances
NAICS North American Industry Classification System
NAS National Academy of Sciences
NATA National Air Toxics Assessment
NEI National Emissions Inventory
NEMS National Energy Modeling System
NESHAP National Emissions Standards for Hazardous Air Pollutants
NGL Natural Gas Liquids
NIOSH National Institutes for Occupational Safety and Health
NO_X Oxides of Nitrogen
NRC National Research Council
NSPS New Source Performance Standards
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PB–HAP Hazardous air pollutants known to be persistent and bio-accumulative in the environment
PFE Potential for Flash Emissions
PM Particulate Matter
$PM_{2.5}$ Particulate Matter (2.5 microns and less)
POM Polycyclic Organic Matter
ppm Parts per Million
ppmv Parts per Million by Volume
PSIG Pounds per Square Inch Gauge
PSIA Pounds per Square Inch Absolute
PTE Potential to Emit
QA Quality Assurance
RACT Reasonably Available Control Technology
RBLC RACT/BACT/LAER Clearinghouse
REC Reduced Emissions Completions
REL California EPA Reference Exposure Level
RFA Regulatory Flexibility Act
RfC Reference Concentration
RfD Reference Dose
RIA Regulatory Impact Analysis
RICE Reciprocating Internal Combustion Engines
RTR Residual Risk and Technology Review
SAB Science Advisory Board
SBREFA Small Business Regulatory Enforcement Fairness Act
SCC Source Classification Codes
scfh Standard Cubic Feet Per Hour
scfm Standard Cubic Feet Per Minute
scm Standard Cubic Meters
scmd Standard Cubic Meters per Day
SCOT Shell Claus Offgas Treatment
SIP State Implementation Plan
SISNOSE Significant Economic Impact on a Substantial Number of Small Entities
S/L/T State and Local and Tribal Agencies
SO_2 Sulfur Dioxide
SSM Startup, Shutdown and Malfunction
STEL Short-term Exposure Limit
TLV Threshold Limit Value
TOSHI Target Organ-Specific Hazard Index
tpy Tons per Year
TRIM Total Risk Integrated Modeling System
TRIM.FaTE A spatially explicit, compartmental mass balance model that describes the movement and transformation of pollutants over time, through a user-defined, bounded system that includes both biotic and abiotic compartments
TSD Technical Support Document
UF Uncertainty Factor
UMRA Unfunded Mandates Reform Act
URE Unit Risk Estimate
VCS Voluntary Consensus Standards
VOC Volatile Organic Compounds
VRU Vapor Recovery Unit

II. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

Responding to the requirements of a consent decree, this action finalizes several rules that apply to the oil and gas production industry and significantly reduce emissions of air pollutants. More particularly, the action finalizes:

- New source performance standards (NSPS) for the Crude Oil and Natural Gas Production and onshore natural gas processing plant source category. The EPA reviewed two existing NSPS for onshore natural gas processing plant source category under section 111(b) of the Clean Air Act (CAA). This action improves the existing NSPS and finalizes standards for certain crude oil and natural gas sources that are not covered by existing NSPS for this sector.
- National Emissions Standards for Hazardous Air Pollutants (NESHAP) for the Oil and Natural Gas Production source category and the Natural Gas Transmission and Storage source category. The EPA conducted risk and technology reviews (RTR) for these rules under section 112 of the CAA. In addition, the EPA has established emission limits for certain currently uncontrolled emission sources in these

source categories. These limits reflect maximum achievable control technology (MACT).

2. Summary of the Major Provisions of the Regulatory Actions

New Source Performance Standards (NSPS). The newly established NSPS for the Crude Oil and Natural Gas Production source category regulate volatile organic compound (VOC) emissions from gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers, storage vessels and leaking components at onshore natural gas processing plants, as well as sulfur dioxide (SO_2) emissions from onshore natural gas processing plants. This rule sets cost-effective performance standards for:

Gas wells. The rule covers any gas well that is ''an onshore well drilled principally for production of natural gas.'' Oil wells (wells drilled principally for the production of crude oil) are not subject to this rule. For fractured and refractured gas wells, the rule generally requires owners/operators to use reduced emissions completions, also known as ''RECs'' or ''green completions,'' to reduce VOC emissions from well completions. To achieve these VOC reductions, owners and/or operators may use RECs or completion combustion devices, such as flaring, until January 1, 2015; as of January 1, 2015, owners and/or operators must use RECs and a completion combustion device. The rule does not require RECs where their use is not feasible, as specified in the rule. See sections IX.A and IX.B of this preamble for further discussion.

Storage vessels. Individual storage vessels in the oil and natural gas production segment and the natural gas processing, transmission and storage segments with emissions equal to or greater than 6 tons per year (tpy) must achieve at least 95.0 percent reduction in VOC emissions. See section IX.E of this preamble for further discussion.

Certain controllers. The rule sets a natural gas bleed rate limit of 6 scfh for individual, continuous bleed, natural gas-driven pneumatic controllers located between the wellhead and the point at which the gas enters the transmission and storage segment. For individual, continuous bleed, natural gas-driven pneumatic controllers located at natural gas processing plants, the rule sets a natural gas bleed limit of zero scfh. See section IX.C of this preamble for further discussion.

Certain compressors. The rule requires a 95.0 percent reduction of VOC emissions from wet seal centrifugal compressors located between the wellhead and the point at which the gas enters the transmission and storage segment. The rule also requires measures intended to reduce VOC emissions from reciprocating compressors located between the wellhead and the point where natural gas enters the natural gas transmission and storage segment. Owners and/or operators of these compressors must replace the rod packing based on specified usage or time. See section IX.D of this preamble for further discussion.

For onshore natural gas processing plants, this final action revises the existing NSPS requirements for leak detection and repair (LDAR) to reflect the procedures and leak thresholds established in the NSPS for Equipment Leaks of VOCs in the Synthetic Organic Chemicals Manufacturing Industry. This final action also revises the existing NSPS requirements for SO_2 emission reductions 99.8 percent to 99.9 percent based on reanalysis of the original data.

National Emissions Standards for Hazardous Air Pollutants (NESHAP). This action also revises the NESHAP for glycol dehydration unit process vents and leak detection and repair (LDAR) requirements. In the final rule for major sources at oil and natural gas production facilities, we have lowered the leak definition for valves at natural gas processing plants to 500 parts per million (ppm) and thus require the application of LDAR procedures at this level. In this final rule, we also have established MACT standards for ''small'' glycol dehydration units, which were unregulated under the initial NESHAP. Covered glycol dehydrators are those with an actual annual average natural gas flow rate less than 85,000 standard cubic meters per day (scmd) or actual average benzene emissions less than 1 ton per year (tpy), and they must meet unit-specific limits for benzene, ethylbenzene, toluene and xylene (BTEX).

In the final rule for major sources at natural gas transmission and storage facilities, we have established MACT standards for ''small'' glycol dehydrators also not regulated under the initial NESHAP. Covered glycol dehydrators are those with an actual annual average natural gas flow rate less than 283,000 scmd or actual average benzene emissions less than 0.90 Mg/yr, and they must meet unit-specific BTEX emission limits. v. See sections VII and X of this preamble for further discussion of both standards.

3. Costs and Benefits

Table 1 summarizes the costs and benefits of this action. See section XI of this preamble for further discussion.

TABLE 1—SUMMARY OF THE MONETIZED BENEFITS, SOCIAL COSTS AND NET BENEFITS FOR THE FINAL OIL AND NATURAL GAS NSPS AND NESHAP AMENDMENTS IN 2015

[Millions of 2008$] [1]

	Final NSPS	Final NESHAP amendments	Final NSPS and NESHAP amendments combined
Total Monetized Benefits [2]	N/A	N/A	N/A.
Total Costs [3]	−$15 million	$3.5 million	−$11 million.
Net Benefits	N/A	N/A	N/A.
Non-monetized Benefits [4]	11,000 tons of HAP 190,000 tons of VOC 1.0 million tons of methane	670 tons of HAP 1,200 tons of VOC 420 tons of methane	12,000 tons of HAP. 190,000 tons of VOC. 1.0 million tons of methane.
	Health effects of HAP exposure. Health effects of $PM_{2.5}$ and ozone exposure. Visibility impairment. Vegetation effects. Climate effects.		

[1] All estimates are for the implementation year (2015).

[2] While we expect that these avoided emissions will result in improvements in air quality and reductions in health effects associated with HAP, ozone and particulate matter (PM), as well as climate effects associated with methane, we have determined that quantification of those benefits and co-benefits cannot be accomplished for this rule in a defensible way. This is not to imply that there are no benefits or co-benefits of the rules; rather, it is a reflection of the difficulties in modeling the direct and indirect impacts of the reductions in emissions for this industrial sector with the data currently available.

[3] The engineering compliance costs are annualized using a 7-percent discount rate. The negative cost for the final NSPS reflects the inclusion of revenues from additional natural gas and hydrocarbon condensate recovery that are estimated as a result of the NSPS. Possible explanations for why there appear to be negative cost control technologies are discussed in the engineering costs analysis section in the Regulatory Impact Analysis (RIA).

[4] For the NSPS, reduced exposure to HAP and climate effects are co-benefits. For the NESHAP, reduced VOC emissions, $PM_{2.5}$ and ozone exposure, visibility and vegetation effects and climate effects are co-benefits. The specific control technologies for the final NSPS are anticipated to have minor secondary disbenefits, including an increase of 1.1 million tons of carbon dioxide (CO_2), 550 tons of nitrogen oxides (NO_X), 19 tons of PM, 3,000 tons of carbon monoxide (CO) and 1,100 tons of total hydrocarbons (THC), as well as emission reductions associated with the energy system impacts. The specific control technologies for the NESHAP are anticipated to have minor secondary disbenefits, but the EPA was unable to estimate the secondary disbenefits. The net CO_2-equivalent emission reductions are 18 million metric tons.

B. Does this action apply to me?

The regulated categories and entities potentially affected by the final standards are shown in Table 2 of this preamble.

TABLE 2—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS ACTION

Category	NAICS code [1]	Examples of regulated entities
Industry	211111	Crude Petroleum and Natural Gas Extraction.
	211112	Natural Gas Liquid Extraction.
	221210	Natural Gas Distribution.
	486110	Pipeline Distribution of Crude Oil.
	486210	Pipeline Transportation of Natural Gas.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather is meant to provide a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative as listed in 40 CFR 60.4 or 40 CFR 63.13 (General Provisions).

C. What are the emission sources affected by this action?

1. What are the emission sources affected by the NSPS?

The emission sources affected by the NSPS include well completions, pneumatic controllers, equipment leaks from natural gas processing plants, sweetening units at natural gas processing plants, reciprocating compressors, centrifugal compressors and storage vessels which are constructed, modified or reconstructed after August 23, 2011. Well completions subject to the NSPS are limited to the flowback period following hydraulic fracturing operations at a gas well affected facility. These completions include those conducted at newly drilled and fractured wells, as well as completions conducted following refracturing operations that may occur at various times over the life of the well. Pneumatic controllers affected by the NSPS include continuous bleed, natural gas-driven pneumatic controllers with a natural gas bleed rate greater than 6 scfh and which commenced construction after August 23, 2011, in the oil and natural gas production segment (except for gas processing plants) and continuous bleed natural gas-driven pneumatic controllers which commenced construction after August 23, 2011, at natural gas processing plants. The NSPS applies to centrifugal compressors with wet seals and reciprocating compressors located in the natural gas production and processing segments. The NSPS also applies to equipment leaks from onshore natural gas processing plants and to storage vessels located in the oil and natural gas production segment, the natural gas processing segment and the natural gas transmission and storage segment. The NSPS also affects sweetening units located onshore that process natural gas from onshore or offshore wells.

2. What are the emission sources affected by the NESHAP?

The emission sources that are affected by the Oil and Natural Gas Production NESHAP (40 CFR part 63, subpart HH) or the Natural Gas Transmission and Storage NESHAP (40 CFR part 63, subpart HHH) include glycol dehydrators and equipment leaks.

D. 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). Following signature by the Administrator, a copy of the action will be posted on the EPA's Web site at the following address: *http://www.epa.gov/airquality/oilandgas*.

Additional information is available on the EPA's RTR Web site at *http://www.epa.gov/ttn/vatw/rrisk/oarpg.html*. This information includes the most recent version of the rule, source category descriptions, detailed emissions and other data were used as inputs to the risk assessments.

E. 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 October 15, 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 the Administrator 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 the rule[.]'' Any person seeking to make such a demonstration to us 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 20004, with a copy to the person 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 (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20004. 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.

III. Background Information on the NSPS and NESHAP

A. What are the statutory authorities for the NSPS and NESHAP?

1. What is the statutory authority for the NSPS?

Section 111 of the CAA requires the EPA Administrator to list categories of stationary sources, if such sources cause or contribute significantly to air pollution, which may reasonably be anticipated to endanger public health or welfare. The EPA must then issue performance standards for such source categories. Whereas CAA section 112 standards are issued for new and existing stationary sources, standards of performance are issued for new and modified stationary sources. These standards are referred to as NSPS. The EPA has the authority to define the source categories, determine the pollutants for which standards should be developed, identify the facilities within each source category to be covered and set the emission level of the standards.

CAA section 111(b)(1)(B) requires the EPA to ''at least every 8 years review and, if appropriate, revise'' performance standards. However, the Administrator need not review any such standard if the ''Administrator determines that such review is not appropriate in light of readily available information on the efficacy'' of the standard. When conducting a review of an existing performance standard, the EPA has authority to revise that standard to add emission limits for pollutants or emission sources not currently regulated for that source category.

In setting or revising a performance standard, CAA section 111(a)(1) provides that performance standards are to ''reflect the degree of emission limitation achievable through the application of the BSER which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.'' In this notice, we refer to this level of control as the BSER. In determining BSER, we typically conduct a technology review that identifies what emission reduction systems exist and how much they reduce air pollution, in practice. Next, for each control system identified, we evaluate its costs, secondary air benefits (or disbenefits) resulting from energy requirements and nonair quality impacts such as solid waste generation. Based on our evaluation, we would determine BSER. The resultant standard is usually a numerical emissions limit, expressed as a performance level (*i.e.,* a rate-based standard or percent control), that reflects the BSER. Although such standards are based on the BSER, the EPA may not prescribe a particular technology that must be used to comply with a performance standard, except in instances where the Administrator determines it is not feasible to prescribe or enforce a standard of performance. Typically, sources remain free to select any control measures that will meet the emission limits. Upon promulgation, an NSPS becomes a national standard to which all new sources must comply.

2. What is the statutory authority for the NESHAP?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, after the EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) of the CAA calls for us to promulgate NESHAP for those sources. ''Major sources'' are those that emit or have the potential to emit (PTE) 10 tpy or more of a single HAP or 25 tpy or more of any combination of HAP. For major sources, the technology-based emission standards must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements and nonair quality health and environmental impacts) and are commonly referred to as MACT standards.

MACT standards are set to reflect application of measures, processes, methods, systems or techniques, including, but not limited to, measures which, (1) reduce the volume of or eliminate pollutants through process changes, substitution of materials or other modifications, (2) enclose systems or processes to eliminate emissions, (3) capture or treat pollutants when released from a process, stack, storage or fugitive emissions point, (4) are design, equipment, work practice or operational standards (including requirements for operator training or certification) or (5) are a combination of the above. CAA sections 112(d)(2)(A)–(E). A MACT standard may take the form of a design, equipment, work practice or operational standard where the EPA first determines either that, (1) a pollutant cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant or that any requirement for or use of such a conveyance would be inconsistent with law or (2) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations. CAA sections 112(h)(1),(2).

The MACT ''floor'' is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3) and may not be based on cost considerations. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT floors for existing sources can be less stringent than floors for new sources, but cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any nonair quality health and environmental impacts and energy requirements.

The EPA is then required to review these technology-based standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, under CAA section 112(d)(6). In conducting this review, the EPA is not obliged to completely recalculate the prior MACT determination. *NRDC* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008).

The second stage in standard-setting focuses on reducing any remaining ''residual'' risk according to CAA section 112(f). This provision requires, first, that the EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks and the EPA's recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted this report (*Residual Risk Report to Congress,* EPA–453/R–99–001) in March 1999. Congress did not act in response to the report, thereby triggering the EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

CAA section 112(f)(2) requires us to determine for source categories subject to MACT standards, whether the emissions standards provide an ample margin of safety to protect public health. CAA section 112(f)(2) expressly preserves our use of a two-step process for developing standards to address any residual risk and our interpretation of ''ample margin of safety'' developed in the *National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The first step in this process is the determination of acceptable risk. The second step provides for an ample margin of safety to protect public health, which is the level at which the standards must be set (unless a more stringent standard is required to prevent an adverse environmental effect, taking into consideration costs, energy, safety and other relevant factors).

If the MACT standards for HAP that are ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million,'' the EPA must promulgate residual risk standards for the source category (or subcategory), as necessary, to provide an ample margin of safety to protect public health. In doing so, the EPA may adopt standards equal to existing MACT standards if the EPA determines that the existing standards are sufficiently protective. *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.''). As mentioned, the EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect,[1] but must consider cost, energy, safety and other relevant factors in doing so.

The terms ''individual most exposed,'' ''acceptable level,'' and ''ample margin of safety'' are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) preserves the interpretation set out in the Benzene NESHAP, and the United States Court of Appeals for the District of Columbia Circuit has concluded that the EPA's interpretation of CAA section 112(f)(2) is a reasonable one. See *NRDC* v. *EPA,* 529 F.3d at 1083 (''[S]ubsection 112(f)(2)(B) expressly incorporates the EPA's interpretation of the Clean Air Act from the Benzene standard, complete with a citation to the **Federal Register**''). See, also, *A Legislative History of the Clean Air Act Amendments of 1990,* volume 1, p. 877 (Senate debate on Conference Report). We notified Congress in the *Residual Risk Report to Congress* that we intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11).

In the Benzene NESHAP, we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by, (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million; and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.,* 100-in-1 million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The agency also stated in the *Residual Risk Report to Congress* that ''The EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risk to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population.'' The agency went on to conclude that ''estimated incidence would be weighed along with other health risk information in judging acceptability.'' As explained more fully in our *Residual Risk Report to Congress,* the EPA does not define ''rigid line[s] of acceptability,'' but considers rather broad objectives to be weighed with a series of other health measures and factors (EPA–453/R–99–001, p. ES–11). The determination of what represents an ''acceptable'' risk is based on a judgment of ''what risks are acceptable in the world in which we live'' (*Residual Risk Report to Congress,* p. 178, quoting the Vinyl Chloride decision at 824 F.2d 1165) recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that ''EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately 1-in-10 thousand, that risk level is considered acceptable.'' 54 FR 38045. We discussed the maximum individual lifetime cancer risk (or maximum individual risk (MIR)) as being ''the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' *Id.* We explained that this measure of risk ''is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years.'' *Id.* We acknowledge that maximum individual lifetime cancer risk ''does not necessarily reflect the true risk, but displays a conservative risk level which is an upper-bound that is unlikely to be exceeded.'' *Id.* Understanding that there are both benefits and limitations to using maximum individual lifetime cancer risk as a metric for determining acceptability, we acknowledged in the 1989 Benzene NESHAP that ''consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk.'' *Id.* Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination.

The agency also explained in the 1989 Benzene NESHAP the following: ''In establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50-kilometer (km)

[1] ''Adverse environmental effect'' is defined in CAA section 112(a)(7) as any significant and widespread adverse effect, which may be reasonably anticipated to wildlife, aquatic life or natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental qualities over broad areas.

exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities and co-emission of pollutants.'' *Id.*

In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone. As explained in the Benzene NESHAP, ''[e]ven though the risks judged 'acceptable' by the EPA in the first step of the Vinyl Chloride inquiry are already low, the second step of the inquiry, determining an 'ample margin of safety,' again includes consideration of all of the health factors, and whether to reduce the risks even further.'' In the ample margin of safety decision process, the agency again considers all of the health risks and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level are considered, including costs and economic impacts of controls, technological feasibility, uncertainties and any other relevant factors. Considering all of these factors, the agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by CAA section 112(f). See 54 FR 38046.

B. What is the litigation history?

On January 14, 2009, pursuant to section 304(a)(2) of the CAA, WildEarth Guardians and the San Juan Citizens Alliance filed a complaint in the United States District Court for the District of Columbia and alleged that the EPA failed to meet its obligations under CAA sections 111(b)(1)(B), 112(d)(6) and 112(f)(2) to take actions relative to the review/revision of the NSPS and the NESHAP with respect to the Oil and Natural Gas Production source category. On February 5, 2010, the Court entered a consent decree that, as successively modified, required the EPA to sign by July 28, 2011,[2] proposed standards and/or determinations not to issue standards pursuant to CAA sections 111(b)(1)(B), 112(d)(6) and 112(f)(2) and to take final action by April 3, 2012. On April 2, 2012, the consent decree was modified to change the date for final action to no later than April 17, 2012.

C. What is the sector-based approach?

Sector-based approaches are based on integrated assessments of industrial operations that consider multiple pollutants in a comprehensive and coordinated manner to manage emissions and CAA requirements. One of the many ways we can address sector-based approaches is by reviewing multiple regulatory programs together whenever possible, for example the NSPS and NESHAP, consistent with all applicable legal requirements. This approach essentially expands the technical analyses on costs and benefits of particular technologies, to consider the interactions of rules that regulate sources. The benefit of multi-pollutant and sector-based analyses and approaches includes the ability to identify optimum strategies, considering feasibility, cost impacts and benefits across the different pollutant types while streamlining administrative and compliance complexities and reducing conflicting and redundant requirements, resulting in added certainty and easier implementation of control strategies for the sector under consideration. In order to benefit from a sector-based approach for the oil and gas industry, the EPA analyzed how the NSPS and NESHAP under consideration relate to each other and other regulatory requirements currently under review for oil and gas facilities. In this analysis, we looked at how the different control requirements that result from these requirements interact, including the different regulatory deadlines and control equipment requirements that result, the different reporting and recordkeeping requirements and opportunities for states to account for reductions resulting from this rulemaking in their State Implementation Plans (SIP). The requirements analyzed affect criteria pollutants, HAP and methane emissions from oil and natural gas processes and cover the NSPS and NESHAP reviews.

As a result of the sector-based approach, this rulemaking will reduce conflicting and redundant requirements. Also, the sector-based approach streamlines the monitoring, recordkeeping and reporting requirements, thus, reducing administrative and compliance complexities associated with complying with multiple regulations. In addition, the sector-based approach in this rule promotes a comprehensive control strategy that maximizes the co-control of multiple regulated pollutants while obtaining emission reductions as co-benefits.

D. What are the health effects of pollutants emitted from the oil and natural gas sector?

The final oil and natural gas sector NSPS and NESHAP amendments are expected to result in significant reductions in existing emissions and prevent new emissions from expansions of this industry. These emissions include HAP, VOC (a precursor to both $PM_{2.5}$ and ozone formation) and methane (a GHG and a precursor to global ozone formation). These emissions are associated with substantial health effects, welfare effects and climate effects. One HAP of particular concern from the oil and natural gas sector is benzene, which is a known human carcinogen. $PM_{2.5}$ is associated with health effects, including premature mortality for adults and infants, cardiovascular morbidity, such as heart attacks, hospital admissions and respiratory morbidity such as asthma attacks, acute and chronic bronchitis, hospital and emergency room visits, work loss days, restricted activity days and respiratory symptoms, as well as visibility impairment. Ozone is associated with health effects, including hospital and emergency department visits, school loss days and premature mortality, as well as injury to vegetation and climate effects.

IV. Summary of the Final NSPS Rule

A. What are the final actions relative to the NSPS for the Crude Oil and Natural Gas Production source category?

We are revising the existing NSPS, which regulate VOC emissions from equipment leaks and SO_2 emissions from sweetening units at onshore gas processing plants. In addition, we are promulgating standards for several new oil and natural gas affected facilities. The final standards apply to affected facilities that commence construction, reconstruction or modification after August 23, 2011, the date of the proposed rule.

The listed Crude Oil and Natural Gas Production source category covers, at a minimum, those operations for which we are establishing standards in this final rule. Table 3 summarizes the 40 CFR part 60, subpart OOOO standards. Further discussion of these changes may

[2] On April 27, 2011, pursuant to paragraph 10(a) of the Consent Decree, the parties filed with the Court a written stipulation to extend the proposal date from January 31, 2011, to July 28, 2011, and the final action date from November 30, 2011, to February 28, 2012. On October 28, 2011, pursuant to paragraph 10(a) of the Consent Decree, the parties filed with the Court a written stipulation to extend the final action date from February 28, 2012, to April 3, 2012.

be found below in this section and in sections V and IX of this preamble.

TABLE 3—SUMMARY OF 40 CFR PART 60, SUBPART OOOO EMISSION STANDARDS

Affected facility	Pollutant	Standard	Compliance dates
Hydraulically fractured wildcat and delineation wells.	VOC	Route flowback emissions to completion combustion device.	October 15, 2012.
Hydraulically fractured low pressure wells, non-wildcat and non-delineation wells.	VOC	Route flowback emissions to completion combustion device.	October 15, 2012.
All other hydraulically fractured gas wells	VOC	Route flowback emissions to completion combustion device.	Prior to January 1, 2015.
All other hydraulically fractured gas wells	VOC	Use REC and route flowback emissions to completion combustion device.	On or after January 1, 2015.
Centrifugal compressors with wet seals	VOC	Reduce emissions by 95 percent	October 15, 2012.
Reciprocating compressors	VOC	Change rod packing after 26,000 hours or after 36 months.	October 15, 2012.
Continuous bleed natural gas-driven pneumatic controllers at natural gas processing plants.	VOC	Natural gas bleed rate of zero	October 15, 2012.
Continuous bleed natural gas-driven pneumatic controllers with a bleed rate greater than 6 scfh between wellhead and natural gas processing plant or oil pipeline.	VOC	Natural gas bleed rate less than 6 scfh	October 15, 2013.
Storage vessels with VOC emissions equal to or greater than 6 tpy.	VOC	Reduce emissions by 95 percent	October 15, 2013.
Equipment leaks at onshore natural gas processing plants.	VOC	LDAR program	October 15, 2012.
Sweetening units at onshore natural gas processing plants.	SO_2	Reduce SO_2 emissions based on sulfur feed rate and sulfur content of acid gas.	October 15, 2012.

1. Standards for Gas Well Affected Facilities

We are finalizing operational standards for completions of hydraulically fractured and refractured gas wells. For purposes of this rule, well completion is defined as the flowback period beginning after hydraulic fracturing and ending with either well shut in or when the well continuously flows to the flow line or to a storage vessel for collection, whichever occurs first. The final rule applies to three subcategories of fractured and refractured gas wells for which well completion operations are conducted: (1) Wildcat (exploratory) and delineation gas wells; (2) non-wildcat and non-delineation gas wells for which the reservoir pressure is insufficient for a REC, commonly referred to as a ''green completion,'' to be performed, as determined by a simple calculation involving reservoir pressure, well depth and flow line pressure at the sales meter (we refer to these wells as ''low pressure gas wells'') and (3) other fractured and refractured gas wells. For subcategory (3) wells, each well completion operation begun on or after January 1, 2015, must employ REC in combination with use of a completion combustion device to control gas not suitable for entering the flow line (we refer to this as REC with combustion). For well completion operations at subcategory (1) wells (exploratory and delineation gas wells), subcategory (2) wells (low pressure gas wells) and for well completion operations begun prior to January 1, 2015, at subcategory (3) gas wells, the final rule requires the control of emissions using either REC with combustion or just a completion combustion device. Owners and operators are encouraged to use REC with combustion during this period.

Well completions subject to the standards are gas well completions following hydraulic fracturing and refracturing operations. These completions include those conducted at newly drilled and fractured wells, as well as completions conducted following refracturing operations at various times over the life of the well. As we explained in the proposal preamble, a completion operation associated with refracturing performed at a well is considered a modification under CAA section 111(a), because physical change occurs to the well resulting in emissions increases during the refracturing and completion operation. In response to comment, we further clarify this point in the final rule, including providing a specific modification provision for well completions in lieu of the General Provisions in 40 CFR 60.14. For a more detailed explanation, please see section IX.A of this preamble. The modification determination and resulting applicability of NSPS to the completion operation following refracturing of gas wells is limited strictly to the gas well affected facility and does not by itself trigger applicability beyond the wellhead to other ancillary components that may be at the well site such as existing storage vessels, process vessels, separators, dehydrators or any other components or apparatus (that is, such equipment is not part of the affected facility).

The final rule provides that uncontrolled well completions conducted on gas wells that are subsequently refractured on or after the effective date of this rule are modifications and are subject to the NSPS. However, gas wells that undergo completion following refracturing are not considered modified and, as a result, are not affected facilities under the NSPS if the completion operation is conducted with the use, immediately upon flowback, of emission control techniques otherwise required on or after January 1, 2015, for new wells and satisfies other requirements, including notification, recordkeeping and reporting requirements.

In the final rule, we provide for a streamlined notification process for well completions at gas well affected facilities consisting of an email pre-notification no later than 2 days in advance of impending completion operations. The email must include information that had been part of the 30-day advance notification, as described in the proposed rule, including contact information for the owner and operator, well identification, geographic

coordinates of the well and planned date of the beginning of flowback.

In the final rule, the recordkeeping and reporting requirements for well completions also provide for a streamlining option that owners and operators may choose in lieu of the standard annual reporting requirements. The standard annual report must include copies of all well completion records for each gas well affected facility for which a completion operation was performed during the reporting period. The alternative, streamlined annual report for gas well affected facilities requires submission of a list, with identifying information of all affected gas wells completed, electronic or hard copy photographs documenting REC in progress for each well for which REC was required and the self-certification required in the standard annual report. The operator retains a digital image of each REC in progress. The image must include a digital date stamp and geographic coordinates stamp to help link the photograph with the specific well completion operation.

2. Standards for Compressor Affected Facilities

The final rule requires measures to reduce VOC emissions from centrifugal and reciprocating compressors. Compressors located at the wellhead or in the transmission, storage and distribution segments are not covered by this final rule and, therefore, are not affected facilities. The final rule contains standards for wet seal centrifugal compressors located in the natural gas production segment and the natural gas processing segment up the point at which the gas enters the transmission and storage segment. The final standards require 95.0 percent reduction of the emissions from each wet seal centrifugal compressor affected facility. The standard can be achieved by capturing and routing the emissions to a control device that achieves an emission reduction of 95.0 percent.

The operational standards for reciprocating compressors in the final rule require replacement of the rod packing based on usage. The owner or operator of a reciprocating compressor affected facility is required to change the rod packing immediately when hours of operation reach 26,000 hours (equivalent to 36 months of continuous usage). Alternatively, owners or operators can elect to change the rod packing every 36 months in lieu of monitoring compressor operating hours. An owner or operator who elects to meet the 26,000 hour requirement is required to monitor the duration (in hours) that the compressor is operated, beginning on the date of initial startup of the reciprocating compressor affected facility, or on the date of the previous rod packing replacement, whichever is later.

3. Standards for Pneumatic Controller Affected Facilities

We are also finalizing pneumatic controller VOC standards. The affected facility is a continuous bleed, natural gas-driven pneumatic controller with a natural gas bleed rate greater than 6 scfh for which construction commenced after August 23, 2011, located (1) in the oil production segment between the wellhead and the point of custody transfer to an oil pipeline; or (2) in the natural gas production segment, excluding natural gas processing plants, between the wellhead and the point at which the gas enters the transmission and storage segment. Except for controllers located at natural gas processing plants, each continuous bleed, natural gas-driven pneumatic controller that emits more than 6 scfh is an affected facility if it is constructed or modified after August 23, 2011. Pneumatic controllers with a bleed rate of 6 scfh or less in the oil and natural gas production segment and all pneumatic controllers located in the natural gas transmission, storage and distribution segments are not covered by this final rule and, therefore, are not affected facilities. At natural gas processing plants, the affected facility is each individual continuous bleed natural gas-operated pneumatic controller, and the final rule includes a natural gas bleed rate limit of zero scfh. The final emission standards for pneumatic controllers at natural gas processing plants reflect the emission level achievable from the use of non-natural gas-driven pneumatic controllers. At other locations in the oil and natural gas production segment, the final rule includes a natural gas bleed rate limit of 6 standard cubic feet of gas per hour for an individual pneumatic controller. The standards provide exemptions in cases where it has been demonstrated that the use of a natural gas-driven pneumatic controller with a bleed rate above the applicable standard is required. However, as discussed in section IX.C, the EPA is allowing a 1-year phase-in period for pneumatic controllers in the final rule.

4. Standards for Storage Vessels

The final rule contains VOC standards for new, modified or reconstructed storage vessels located in the oil and natural gas production, natural gas processing and natural gas transmission and storage segments. The final rule, which applies to individual storage vessels, requires that storage vessels with VOC emissions equal to or greater than 6 tpy achieve at least 95.0 percent reduction in VOC emissions. For storage vessels constructed, modified or reconstructed at well sites with no wells already in production at the time of construction, modification or reconstruction, the final rule provides a 30-day period from startup for the owner or operator to determine whether the magnitude of VOC emissions from the storage vessel will be at least 6 tpy. If the storage vessel requires control, the final rule provides an additional 30 days for the control device to be installed and operational. For storage vessels constructed, modified or reconstructed at well sites with one or more wells already in production at the time of construction, modification or reconstruction, these estimation and installation periods are not provided because an estimate of VOC emissions can be made using information on the liquid production characteristics of the existing wells.

In addition, the final rule provides for a 1-year phase-in period for storage vessel controls. Refer to section IX.E.4 of this preamble for further discussion.

5. Standards for Affected Facilities Located at Onshore Natural Gas Processing Plants

For onshore natural gas processing plants, we are revising the existing NSPS requirements for LDAR to reflect the procedures and leak thresholds established by 40 CFR part 60, subpart VVa. Subpart VVa lowers the leak definition for valves from 10,000 ppm to 500 ppm, and requires the monitoring of connectors. Pumps, pressure relief devices and open-ended valves or lines are also monitored.

6. Standards for Sweetening Unit Affected Facilities at Onshore Natural Gas Processing Plants

The final rule regulates SO_2 emissions from natural gas processing plants by requiring affected facilities to reduce SO_2 emissions by recovering sulfur. The final rule incorporates the provisions of 40 CFR part 60, subpart LLL into 40 CFR part 60, subpart OOOO, and minor revisions were made to adapt the subpart LLL language to subpart OOOO. The final rule also increased the SO_2 emission reduction standard from the subpart LLL requirement of 99.8 percent to 99.9 percent for units with sulfur production rate of at least 5 long tons per day. This change is based on reanalysis of the original data used in the subpart LLL BSER analysis.

B. What are the effective and compliance dates for the final NSPS?

The revisions to the existing NSPS standards and the new NSPS standards promulgated in this action are effective on October 15, 2012. Affected facilities must be in compliance with the final standards on the effective date, October 15, 2012.

V. Summary of the Significant Changes to the NSPS Since Proposal

The previous section summarized the requirements that the EPA is finalizing in this rule. This section will discuss in greater detail the key changes the EPA has made since proposal. These changes result from the EPA's review of the additional data and information provided to us and our consideration of the many substantive and thoughtful comments submitted on the proposal.

We believe the changes make the final rule more flexible and cost-effective, address concerns with equipment availability, streamline recordkeeping and reporting requirements and improve clarity, while fully preserving or improving the public health and environmental protection required by the CAA.

A. Gas Well Affected Facilities

We have revised the requirements for gas well affected facilities since proposal in response to comment. The final rule applies to three subcategories of fractured and refractured gas wells for which well completion operations are conducted: (1) Wildcat (exploratory) and delineation gas wells; (2) non-wildcat and non-delineation gas wells for which the reservoir pressure is insufficient for a REC to be performed, as determined by a simple calculation involving reservoir pressure, well depth and flow line pressure at the sales meter (we refer to these wells as ''low pressure gas wells''); and (3) other fractured and refractured gas wells. In the proposed 40 CFR part 60, subpart OOOO, upon promulgation of this rule, each well completion or recompletion at a non-exploratory or non-delineation well would have had to employ REC with combustion. Because of uncertainties in the supply of equipment and labor over the near-term, we are now requiring this work practice standard for completion operations begun at subcategory (3) gas wells (non-exploratory and non-delineation wells) on or after January 1, 2015. Until this date, flowback emissions must either be controlled using REC or routed to a completion combustion device unless it is technically infeasible or unsafe to do so. Owners and operators are encouraged to use REC when available during this period. Completion operations at subcategory (1) gas wells (wildcat and delineation wells) and subcategory (2) gas wells (non-wildcat and non-delineation low pressure gas wells) begun on or after October 15, 2012 are required to control flowback emissions by using REC with combustion or by routing emissions to a completion combustion device alone unless it is technically infeasible or unsafe to do so.

The final rule includes a specific modification provision for well completions in lieu of the General Provisions in 40 CFR 60.14. For a more detailed explanation, please see section IX.A of this preamble. In addition, we have revised the definition of ''flowback period'' to more clearly define when the flowback period begins and ends.

In the proposed rule, all completions at existing wells (*i.e.,* those originally constructed on or before August 23, 2011) that are subsequently fractured or refractured were considered to be modifications. In the final rule, completions of wells that are refractured on or after the rule's effective date are not considered modified and, as a result, are not affected facilities under the NSPS, if the completion operation is conducted with the use, immediately upon flowback, of emission control techniques required on or after January 1, 2015, for new wells and satisfies other requirements, including notification, recordkeeping and reporting requirements.

In the proposed rule, we prescribed specific equipment to accomplish an REC. In the final rule, we have removed the required equipment specifications for REC and added operational standards that will result in minimizing emissions and maximizing product recovery. In light of the comments received, we conclude that it is inappropriate and unnecessary to prohibit the use of other equipment that can be used to accomplish an REC and that the operational standards can be achieved using a variety of equipment that can change from well to well.

Initial compliance requirements for gas well affected facilities have also been revised and streamlined. Owners and operators are now required to notify the Administrator of the actual date of each well completion operation by email no later than 2 days prior to the well completion operation, rather than the proposed requirement of notifying the Administrator of the date of the well completion operation within 30 days of the commencement of each well completion operation. The email must include information that had been part of the 30-day advance notification, as described in the proposed rule, including contact information for the owner and operator, well identification, geographic coordinates of the well and planned date of the beginning of flowback. However, if the owner or operator is subject to state regulations that require advance notification of well completions and has met those advance notification requirements, then the owner or operator is considered to have met the advance notification requirements for gas well completions under the NSPS.

In the final rule, the recordkeeping and reporting requirements for well completions also provide for a streamlining option that owners and operators may choose in lieu of the standard annual reporting requirements. The standard annual report must include copies of all well completion records for each gas well affected facility for which a completion operation was performed during the reporting period. The alternative, streamlined annual report for gas well affected facilities requires submission of a list, with identifying information of all affected gas wells completed, electronic or hard copy photographs documenting REC in progress for each well for which REC was required and the self-certification required in the standard annual report. The operator retains a digital image of each REC in progress. The image must include a digital date stamp and geographic coordinates stamp to help link the photograph with the specific well completion operation.

Refer to section IX.B of this preamble and the Responses to Comments document, available in the docket, for detailed discussion regarding these changes.

B. Centrifugal and Reciprocating Compressor Affected Facilities

In the final rule, we have made changes that impact both reciprocating and centrifugal compressor affected facilities in response to comments requesting clarification. Because we are not finalizing standards covering them, centrifugal and reciprocating compressors located in the transmission, storage and distribution segments are not affected facilities.

In the proposed rule, all centrifugal compressors would be required to use dry seals. We had also solicited comment on the use of wet seals with controls as an acceptable alternative to dry seals due to potential technical infeasibility of using dry seals for certain applications. Based on comments received, the final rule requires that centrifugal compressors with wet seals reduce emissions by 95.0

percent. The standard can be achieved by capturing and routing emissions from the wet seal fluid degassing system to a control device that reduces VOC emissions by 95.0 percent. Testing, monitoring, recordkeeping, reporting and notification requirements associated with the control devices have also been added. In contrast to the proposed rule, in the final rule, centrifugal compressors with dry seals are not affected facilities. More detailed discussion of this change is presented in section IX.D of this preamble.

As proposed, owners or operators of reciprocating compressor affected facilities were required to change rod packing after 26,000 hours of operation. This is equivalent to approximately 36 months of continuous operation. Based on comments we received, we are changing the final rule to provide operators the option of changing the rod packing every 36 months instead of tracking compressor hours of operation and changing rod packing after 26,000 hours of operation.

Refer to section IX.D of this preamble and the Responses to Comments document, available in the docket, for detailed discussion regarding these changes.

C. Pneumatic Controller Affected Facilities

For pneumatic controller affected facilities located in the oil and natural gas production segments, we have revised the definition of pneumatic controller affected facility from a single pneumatic controller to a single, continuous bleed, natural gas-driven pneumatic controller with a continuous bleed rate greater than 6 scfh for which construction, modification or reconstruction commenced after August 23, 2011. At natural gas processing plants, individual continuous bleed natural gas-operated pneumatic controllers for which construction, modification or reconstruction commenced after August 23, 2011, are affected facilities under this rule. As explained further in section IX.C of this preamble, this change provides clarity by more specifically defining the pneumatic controllers we intended to regulate in this final rule. In addition, only pneumatic controllers located prior to the point at which the gas enters the transmission and storage segment are subject to the NSPS. Because we are not finalizing standards covering them, controllers located in the transmission and storage segment are not affected facilities. The emission rates we proposed for pneumatic controllers have not changed in the final rule.

All new pneumatic controller affected facilities are required, in the final rule, to be tagged with the month and year of installation and identification that allows traceability to the records for that controller.

In the proposed rule, each pneumatic controller affected facility would have to comply upon promulgation. The final rule allows a 1-year phase-in beginning October 15, 2012 before the bleed rate limit is effective for an affected facility. We believe this is necessary for at least two reasons. First, owners and operators would demonstrate compliance based on information in the manufacturers' specification. We have concluded that such information is not always included in current manufacturers' specifications and a period of time is required for manufacturers to test their products and modify specifications to include the information. Second, we are not aware of any add-on control device that is or can be used to reduce VOC emissions from gas-driven pneumatic devices.

Finally, language in the proposed rule could have been interpreted to mean that all pneumatic controllers installed in any year after the proposal date must be reported each year, rather than those installed only during the reporting period. In order to clarify and streamline the recordkeeping and reporting requirements associated with pneumatic controllers, we are requiring only information concerning those affected facilities constructed, modified or reconstructed during the reporting period to be included in the annual report.

Refer to section IX.C of this preamble and the Responses to Comments document, available in the docket, for detailed discussion regarding these changes.

D. Storage Vessel Affected Facilities

We have modified the definition of ''storage vessel'' to exclude surge control vessels, knockout vessels and pressure vessels designed to operate without emissions to the atmosphere. In addition, we have clarified that we consider a storage vessel that is skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships) to be subject to 40 CFR part 60, subpart OOOO if it is intended to be located at a site for at least 180 consecutive days.

In the proposed rule, we established a throughput threshold for storage vessels below which they were not subject to the NSPS. In order to remove confusion with respect to the emission factors used to develop the throughput threshold and to address comments indicating significant difficulty measuring throughput, we have revised the final rule such that storage vessels that emit 6 tpy of VOC or more are subject to the NSPS, based on our analysis in the proposed rule showing that the proposed NSPS is cost-effective for storage vessels with that level of VOC emissions. In the final rule, for storage vessels constructed, modified or reconstructed at well sites with no wells already in production at the time of construction, the final rule provides a 30-day period for the owner or operator to determine whether the magnitude of VOC emissions from the storage vessel will be at least 6 tpy. If the storage vessel requires control, the final rule provides an additional 30 days for the control device to be installed and operational. For storage vessels constructed, modified or reconstructed at well sites with one or more wells already in production at the time of construction, modification or reconstruction, VOC emissions can be determined prior to startup. Accordingly, these estimation and installation periods are not necessary and, therefore, not provided.

Several requirements for storage vessels in the proposed rule pointed to 40 CFR part 63, subpart HH (the Oil and Natural Gas Production NESHAP). However, subpart HH regulates HAP while this NSPS regulates VOC. Therefore, in order to eliminate confusion caused by cross-referencing another regulation and to tailor the requirements for VOC regulation, we have incorporated the storage vessel requirements from subpart HH into 40 CFR part 60, subpart OOOO and modified those requirements, as appropriate for this rule.

In the proposed rule, each storage vessel required to reduce emissions would have to comply upon promulgation. In the final rule, owners or operators are allowed a 1-year phase-in beginning October 15, 2012 before the 95.0-percent control requirement is effective. We believe this is necessary because of initial problems securing control devices that are manufacturer-tested and have appropriate documentation for determining control efficiency. In addition, we believe that owners or operators will require a period of time to establish the need for controls and install them where called for. The 1-year phase-in will also allow owners or operators the necessary time to establish the need for a control device and procure and install the equipment.

Refer to section IX.E of this preamble and the Responses to Comments document, available in the docket, for detailed discussion regarding these changes.

E. Equipment Leaks Affected Facilities and Sweetening Unit Affected Facilities at Onshore Natural Gas Processing Plants

We have revised the identification of affected facilities for equipment leaks at natural gas processing plants. We proposed that compressors and equipment (as defined in the rule) located at onshore natural gas processing plants were affected facilities. As discussed above, compressors (reciprocating and centrifugal) have requirements under 40 CFR part 60, subpart OOOO that extend beyond the natural gas processing plant. To remove the duplicative requirements for compressors at natural gas processing plants, we have revised the identification of affected facility to exclude compressors from the standards that apply to equipment leaks at onshore natural gas processing plants. Refer to the Responses to Comments document, available in the docket, for detailed discussion regarding these affected facilities.

F. Changes to Notification, Recordkeeping and Reporting Requirements

In response to comment expressing concern with the burdens associated with demonstrating and monitoring compliance, we have reanalyzed the notification, recordkeeping and reporting requirements in the proposed rule and eliminated duplicative and unnecessary requirements for all emission points. For well completions, compressors, pneumatic controllers and storage vessels, we have removed the General Provisions notification requirements in 40 CFR 60.7(a)(1), (3) and (4). These requirements relate to notification of construction and initial performance testing and are more suited to construction of more traditional facilities (*e.g.,* gas processing plants, refineries and chemical plants) than the numerous individual pieces of apparatus (*e.g.,* individual pneumatic controllers, compressor and storage vessels) that are ''affected facilities'' under this final rule. Specific notification and initial compliance demonstration requirements in the final rule make the General Provisions notification requirements unnecessary for gas well affected facilities.

As mentioned previously, we have also streamlined the notification, recordkeeping and reporting requirements for gas well affected facilities. In place of a written notification of each well completion operation 30 days prior to the completion, owners or operators must submit a notification no later than 2 days prior to the date of the completion. This notification may be submitted by email. To avoid duplicative and potentially conflicting advance notification requirements, the final rule provides that owners or operators who are subject to state regulations that require advance notification of well completions and have met those notification requirements are considered to have met the advance notification requirements of the NSPS. Additionally, in lieu of the standard annual reporting requirements, the final rule allows submission of an annual report for gas well affected facilities that consists only of a list, with identifying information of all affected gas wells completed, electronic or hard copy photographs documenting REC in progress for each well for which REC was required and the self-certification required in the standard annual report.

In the affirmative defense provisions of the rule, a citation was corrected, minor wording changes were made and reporting requirements were refined. The provisions we retained in the final rule are those we believe are necessary to assure regulatory agencies and the public that the owner or operator is in compliance with the final rule. Refer to section IX.F of this preamble and the Responses to Comments document, available in the docket, for detailed discussion regarding these changes.

VI. Summary of the Final NESHAP Rules

A. What are the final rule actions relative to the Oil and Natural Gas Production (subpart HH) source category?

Table 4 summarizes the changes to 40 CFR part 63, subpart HH. Further discussion of these changes may be found below in this section and in sections VII and X of this preamble.

TABLE 4—SUMMARY OF CHANGES TO 40 CFR PART 63, SUBPART HH

Affected source	Nature of change	Standard
Small glycol dehydrators	Established MACT standards for previously unregulated source.	BTEX emission limit: New sources—4.66×10^{-6} g/scm-ppmv. Existing sources—3.28×10^{-4} g/scm-ppmv.
''Associated equipment''	Revised definition to exclude all storage vessels	N/A.
Valves—equipment leaks	Revised definition of leak	LDAR for valves must be applied at 500 ppm.
All affected sources	Eliminated exemption from compliance during periods of startup, shutdown and malfunction.	Standards apply at all times.

Pursuant to CAA sections 112(d)(2) and (3), we have established MACT standards for small glycol dehydrators that were not regulated in the initial NESHAP. In addition, we have revised the definition of ''associated equipment'' to exclude from the definition of that term all storage vessels, not just those with potential for flash emissions (PFE).

With regard to our CAA section 112(d)(6) review, we conclude that there have been no developments in practices, processes or control technologies for large glycol dehydrators and storage vessels with PFE. As noted at proposal, however, there have been relevant developments for equipment leaks, and we are finalizing the proposed revisions to the leak definition for valves at natural gas processing plants. Specifically, under CAA section 112(d)(6), we revised the leak definition for valves to 500 ppm, thus requiring the application of the leak detection and repair requirement at this lower detection level. We did not make other revisions to the standards pursuant to our CAA section 112(d)(6) review. Our review under CAA section 112(f)(2) also did not result in revision to the standards. We found that the MACT standards in 40 CFR part 63, subpart HH (coupled with the new MACT standard for small glycol dehydrators) provide an ample margin of safety to protect public health and prevent adverse environmental effects. Accordingly, we are re-adopting those standards to satisfy the requirements of CAA section 112(f).

Additionally, we amended 40 CFR part 63, subpart HH to apply the standards at all times and made other revisions relative to periods of startup,

shutdown and malfunction. Lastly, the final rule revises and adds certain testing and monitoring and related notification, recordkeeping and reporting requirements and makes certain other minor technical revisions to the NESHAP.

1. Standards for Small Glycol Dehydration Units

In this final rule, we have established MACT standards under CAA sections 112(d)(2) and (3) for small glycol dehydration units, which were left unregulated in the initial NESHAP. This subcategory consists of glycol dehydrators with an actual annual average natural gas flowrate less than 85,000 standard cubic meters per day (scmd) or actual average benzene emissions less than 0.9 megagrams per year (Mg/yr). The final MACT standards for small dehydrators at oil and gas production facilities require that existing affected sources at a major source meet a unit-specific BTEX limit of 3.28×10^{-4} grams BTEX/standard cubic meters (scm)-parts per million by volume (ppmv) and that new affected sources meet a BTEX limit of 4.66×10^{-6} grams BTEX/scm-ppmv.

2. Standards for Equipment Leaks

In the final rule, as a result of our technology review under CAA section 112(d)(6), we are revising the leak definition for valves to 500 ppm, thus requiring the application of the LDAR requirement at this lower detection level. This leak definition applies only to valves at natural gas processing plants, and not other components.

3. Notification, Recordkeeping and Reporting Requirements

The final rule revises certain recordkeeping requirements of 40 CFR part 63, subpart HH. Specifically, facilities using carbon adsorbers as a control device are required to keep records of their carbon replacement schedule and records for each carbon replacement. In addition, owners and operators are required to keep records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control equipment and monitoring equipment.

In conjunction with the new MACT standards for small existing glycol dehydration units, owners and operators of such affected units are required to submit an initial notification within 1 year after they become subject to the provisions of this subpart or by October 15, 2013, whichever is later.

The final amendments to the NESHAP also include additional requirements for the contents of the periodic reports. The periodic reports are required to include periodic test results and information regarding any carbon replacement events that occurred during the reporting period. Additionally, periodic reports are required to include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The periodic report is also required to include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions, including actions taken to correct a malfunction.

B. What are the final rule amendments for the Natural Gas Transmission and Storage (subpart HHH) source category?

Table 5 summarizes the changes to 40 CFR part 63, subpart HHH. Further discussion of these changes may be found below in this section and in sections VII and X of this preamble.

TABLE 5—SUMMARY OF CHANGES TO 40 CFR PART 63, SUBPART HHH

Affected source	Nature of change	Standard
Small glycol dehydrators	Established MACT standards for previously unregulated source.	BTEX emission limit: New sources—5.44×10^{-5} g/scm-ppmv. Existing sources—3.01×10^{-4} g/scm-ppmv.
All affected sources	Eliminated exemption from compliance during periods of startup, shutdown and malfunction.	Standards apply at all times.

Pursuant to CAA section 112(d)(2) and (3), we have established MACT standards for small glycol dehydrators that were not regulated in the initial NESHAP. We have also amended 40 CFR part 63, subpart HHH to apply the standards at all times, and made other revisions relative to periods of startup, shutdown and malfunction. Lastly, the final rule revises and adds certain testing and monitoring and related notification, recordkeeping and reporting requirements, as well as makes other minor technical revisions to the NESHAP.

With regard to our CAA section 112(d)(6) review, we conclude that there have been no developments in practices processes or control technologies for large glycol dehydrators. We also found that the MACT standards in 40 CFR part 63, subpart HHH (coupled with the new MACT standard for small glycol dehydrators) provide an ample margin of safety to protect public health and prevent adverse environmental effects. Accordingly, we are re-adopting those standards to satisfy the requirements of CAA section 112(f). Thus, our reviews under CAA sections 112(d)(6) and 112(f)(2) did not result in any revisions to the standards.

1. Standards for Glycol Dehydration Units

In this final rule, we have established MACT standards for small glycol dehydration units in the Natural Gas Transmission and Storage source category. This subcategory consists of glycol dehydrators with an actual annual average natural gas flowrate less than 283,000 scmd or actual average benzene emissions less than 0.9 Mg/yr. The final MACT standard for this subcategory of small dehydrators requires existing affected sources to meet a unit-specific BTEX emission limit of 3.01×10^{-4} grams BTEX/scm-ppmv and new affected sources are required to meet a BTEX limit of 5.44×10^{-5} grams BTEX/scm-ppmv.

2. Notification, Recordkeeping and Reporting Requirements

The final rule revises certain recordkeeping requirements of 40 CFR part 63, subpart HHH. Specifically, facilities using carbon adsorbers as a control device are required to keep records of their carbon replacement schedule and records for each carbon replacement. In addition, owners and operators are required to keep records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control equipment and monitoring equipment.

In conjunction with the promulgation of the MACT standards for small glycol dehydration units, the final rule requires that owners and operators of such affected units submit an initial notification within 1 year after the unit becomes subject to the provisions of this

subpart or by October 15, 2013, whichever is later.

The final amendments to the NESHAP also include additional requirements for the contents of the periodic reports. For 40 CFR part 63, subpart HHH, the periodic reports are required to include periodic test results and information regarding any carbon replacement events that occurred during the reporting period. Additionally, periodic reports are required to include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The periodic report is also required to include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions, including actions taken to correct a malfunction.

C. What is the effective date of this final rule and compliance dates for the standards?

The effective date of this rule is October 15, 2012.

The compliance date for new affected sources (those that commenced construction or reconstruction on or after August 23, 2011) is immediately upon initial startup or the effective date of the standards, October 15, 2012, whichever is later.

The compliance date for existing small glycol dehydration units that are subject to MACT for the first time (*i.e.,* those that commenced construction before August 23, 2011) is October 15, 2015.

An affected source at a production field facility that constructed before August 23, 2011, that was previously determined to be an area source but becomes a major source on October 15, 2012 due to the amendment to the associated equipment definition in 40 CFR part 63, subpart HH, has until October 15, 2015 to comply with the relevant emission standards.

The compliance date for valves at existing natural gas processing plants, constructed before August 23, 2011, due to the amendment to the leak definition in 40 CFR part 63, subpart HH, is 1 year after the effective date of the standards October 15, 2013.

VII. Summary of the Significant Changes to the NESHAP Since Proposal

The previous section described the requirements that the EPA is finalizing in this rule. This section discusses in greater detail the key changes the EPA is making from the proposal. These changes result from the EPA's review of the additional data and information provided to us and our consideration of the substantive comments submitted on the proposal.

We have retained the same approach and methodology to establishing the standards as described at proposal. We have, however, made some changes in response to comments, which are described further below. One change resulted in revisions to the MACT emission limits for small glycol dehydration units. In addition, based on the comments received, we are not finalizing the MACT standard for the subcategory of storage vessels without the PFE, which was a subcategory that was left unregulated in the 1999 40 CFR part 63, subpart HH rule. Specifically, based on our review of the comments, we believe that we need additional data and information to set an emission standard for storage vessels without the PFE, and we intend to collect the additional data and propose MACT emission standards under section 112(d)(2) and (3) of the CAA for such storage vessels. Finally, we are retaining the 0.9 Mg/yr compliance option for large dehydration units.

A. What are the significant changes since proposal for the Oil and Natural Gas Production (subpart HH) source category?

1. Changes Made to Amendments Proposed Under the Authority of CAA Sections 112(d)(2) and (3)

Under the authority of sections 112(d)(2) and (3) of the CAA, we proposed amendments to 40 CFR part 63, subpart HH by adding requirements for previously unregulated units; specifically, we proposed standards for small glycol dehydration units and storage vessels without the PFE.

In the final amendments for 40 CFR part 63, subpart HH, we have revised the proposed MACT standards for small glycol dehydration units in response to comments that we did not take into account variability in the development of the MACT floor. In our proposal, the MACT standards for existing affected sources was a unit-specific BTEX limit of 1.10×10^{-4} g BTEX/scm-ppmv and for new affected sources was a BTEX limit of 4.66×10^{-6} g BTEX/scm-ppmv. In this final rule, we accounted for variability by using an upper prediction limit to develop a revised BTEX emission limit for existing small glycol dehydration units of 3.28×10^{-4} grams BTEX/standard cubic meters (scm)-parts per million by volume (ppmv) and for new small glycol dehydration units the revised BTEX limit is 4.66×10^{-6} grams BTEX/scm-ppmv. The process for developing these emissions limitations is documented in the Response to Comments document and a technical memorandum, both of which are in the docket.

Finally, as noted above, in response to comments, we are not finalizing MACT standards for storage vessels without the PFE in this rule. We received numerous comments expressing concerns with how we established the proposed standards for this subcategory. In response to such comments, we have re-evaluated the proposed MACT standards and concluded that we need (and intend to gather) additional data on these sources in order to analyze and establish MACT emission standards for this subcategory of storage vessels under section 112(d)(2) and (3) of the CAA. See the Response to Comments document for additional discussion.

2. Changes Made to Amendments Proposed Under the Authority of CAA Section 112(f)(2)

We proposed to eliminate the 0.9 Mg/yr benzene compliance option for large glycol dehydration units because, in the proposed rule, we estimated that the emissions allowed as the result of this compliance option resulted in estimated cancer risks up to 400-in-1-million. We received multiple comments concerning our proposed risk estimate. After reviewing these comments, we discovered that we had significantly overestimated the allowable emissions associated with this compliance option. First, for several sources, including the source that we predicted had the 400-in-1 million MIR, we used an incorrect factor (or multiplier) to scale up actual emissions associated with sources that could utilize the compliance option level of 0.9 Mg/yr to allowables. We used an incorrect factor due to an inadvertent transcription error in our calculations. Second, we learned that the risk assessment supporting the proposed rule erroneously included several area sources, which are not subject to 40 CFR part 63, subpart HH and thus should not have been included in the CAA section 112(f) risk assessment. After revising the risk assessment to remove area sources, and considering the MACT standard promulgated today for small glycol dehydrators pursuant to CAA sections 112(d)(2) and (3), the MIR for the Oil and Natural Gas Production source category based on actual and allowable emissions is 10-in-1 million, compared to the 400-in-1 million[3] based on

[3] At proposal, we used an incorrect factor (or multiplier) in calculating allowable emissions for

Continued

allowable emissions and 40-in-1 million based on actual emissions that were estimated in the proposed rule.

As the result of our revised risk analysis, we have determined that approximately 120,000 people are estimated to have cancer risks at or above 1-in-1 million, compared to 160,000 people estimated in the proposed rule. Total estimated cancer incidence from the source category is 0.02 excess cancer cases per year, or one case in every 50 years. This estimate is unchanged from the proposed rule because the incidence from a small number of sources typically does not affect total incidence reported to one significant figure. The estimate from the proposed rule of maximum chronic non-cancer TOSHI value (0.1) is unchanged, driven by naphthalene emissions from fugitive sources. The maximum acute non-cancer hazard quotient value (9, based on the California EPA reference exposure level (REL) for benzene) is also unchanged from the proposed rule. Although driven by the same pollutant that drives the MIR, benzene, the maximum acute hazard quotient value did not change from the proposed rule because the source driving the acute value was not identified as an area source and, thus, remained in the revised analysis. It is common for the maximum acute hazard quotient and cancer MIR not to coincide because the acute value is strongly dependent on short-term meteorology and the distance to the facility property boundary, whereas the MIR is dependent on long-term meteorology and the distance to census block receptors. There are 13 cases in the source category (out of approximately 1,000 facilities) where the REL is exceeded by more than a factor of 2.

Based on the conservative nature of the acute exposure scenario used in the screening assessment for this source category, the EPA has judged that, considering all associated uncertainties, the potential for effects from acute exposures is low. Screening estimates of acute exposures were evaluated for each HAP at the point of highest off-site exposure for each facility (*i.e.,* not just the census block centroids) assuming that a person is present at this location at a time when both the peak emission rate and worst-case dispersion conditions occur. Although the REL (which indicates the level below which adverse effects are not anticipated) is exceeded in this case, we believe the potential for acute effects is low for several reasons. The acute modeling scenario is worst-case because of the confluence of peak emission rates and worst-case dispersion conditions. Also, the generally sparse populations near the facilities with the highest estimated 1-hour exposures make it less likely that a person would be near the plant to be exposed.

We also conducted a facility-wide risk assessment. The maximum facility-wide risk estimate of 100-in-1 million is unchanged from the proposed rule. Also unchanged from proposal is the fact that the facility-wide risk is driven by emissions from reciprocating internal combustion engines (RICE) and these engines are not part of the Oil and Natural Gas Production source category. In fact, oil and natural gas production operations contribute only about one percent or less to the total facility-wide risks. In the last few years, the Agency has revised the MACT standards for certain RICE. See 75 FR 9648 and 51570. Although it is difficult to discern from the available data which types of RICE are driving the facility-wide risk, it is important to note that the 2005 National Emissions Inventory (NEI) data on which we modeled risk did not take into account the recent MACT revisions to the RICE rule. Finally, our assessment that the potential for significant human health risks due to multipathway exposures or adverse environmental effects is low has not changed since proposal (see 76 FR 52774).

Consistent with the approach established in the Benzene NESHAP, the EPA weighed all health risk measures and information, including the maximum individual cancer risk, the cancer incidence, the number of people exposed to a risk greater than 1-in-1-million, the distribution of risks in the exposed population, and the uncertainty of our risk calculations in determining whether the risk posed by emissions from Oil and Natural Gas Production is acceptable. In this case, because the MIR is well below 100-in-1-million, and because a number of other factors indicate relatively low risk concern, including low cancer incidence, low potential for adverse environmental effects or human health multi-pathway, and unlikely chronic and acute noncancer health impacts, we conclude that the level of risk associated with the Oil and Natural Gas Production source category MACT standards (including the small glycol dehydrator MACT standard issued here) is acceptable.[4]

In making our proposed ample margin of safety determination under CAA section 112(f)(2), we subsequently evaluated the risk reductions and costs associated with various emissions control options to determine whether we should impose additional standards to reduce risks further. As stated above, we made certain revisions to the risk assessment in response to comments and the resulting MIR for 40 CFR part 63, subpart HH is 10-in-1 million. We have not identified any emission control options that would reduce emissions and risk associated with subpart HH sources for glycol dehydration units and storage vessels. Our proposed amendment to remove the 0.9 Mg/yr compliance option does not affect the risk driver, which is fugitive emissions. As a result, we are retaining the 0.9 Mg/yr compliance option in the final rule. We have determined that the risks associated with the level of emissions allowed by the MACT standards are driven by fugitive emissions (*i.e.,* leaks).

Since a LDAR program is the typical method for reducing emissions from fugitive sources, we considered requiring a LDAR program to reduce risk for this source category. The NEI dataset for this source category contains approximately 2,500 emission points that we characterized as fugitive. These emission points are located at 639 facilities. The fugitive emissions associated with those 639 facilities are 747 tons of HAP.

In evaluating the effectiveness of a LDAR program at these facilities we looked at two different LDAR programs—one is a program equivalent to 40 CFR part 60, subpart VV, and the second is a more stringent program equivalent to 40 CFR part 60, subpart VVa.[5] A LDAR program equivalent to subpart VV can achieve emission reductions of approximately 39 percent with capital and annual costs of

the source that, at proposal, had an estimated MIR of 400-in-1 million. Since proposal, we have learned that this source is an area source and thus is not subject to the Subpart HH MACT standards. As such, we removed this source from our section 112(f) risk analysis. In any event, we have determined that even if this area source were to have actual emissions at the 0.9 Mg/yr level, its risk would be 3-in-1 million.

[4] We reach the same conclusion even if we do not consider the new MACT for small glycol dehydrators in our acceptability determination. Indeed, focusing solely on the standards in the existing MACT, the level of risk associated with such standards would remain 10-in-1 million, and thus our acceptability determination does not change. There is one facility that is a small glycol dehydrator that has an MIR of 10-in-1 million. After imposition of the MACT for small glycol dehydrators, however, this unit would have an MIR of 7-in-1 million. Also, see memorandum titled *Supplemental Facility Information Obtained from Various State/Local Agencies and Additional Analysis,* March 20, 2012.

[5] See memorandum titled *Equipment Leak Emission Reduction and Cost Analysis for Well Pads, Gathering and Boosting Stations, and Transmission and Storage Facilities Using Emission and Cost Data from the Uniform Standards,* April 17, 2012.

$237,700 and $79,419 per facility, respectively. Therefore, such a program for the 639 facilities would be expected to reduce emissions by 249 tons of HAP with total capital and annual costs of $152 million and $50.7 million, respectively. The cost effectiveness would be approximately $204,000 per ton of HAP.

A LDAR program equivalent to 40 CFR part 60, subpart VVa can achieve emission reductions of approximately 43 percent overall with capital and annual costs of $241,000 and $82,900 per facility, respectively. Therefore, an LDAR program for the 639 facilities would be expected to reduce emissions by 275 tons of HAP, with total capital and annual costs of $154 million and $53 million, respectively. The cost effectiveness would be approximately $193,000 per ton of HAP reduced. These additional control requirements would reduce the MIR for the source category from 10-in-1 million to approximately 7-in-1 million.

As explained in the proposal, in accordance with the approach established in the Benzene NESHAP, we weigh all health risk measures and information considered in the risk acceptability determination, along with the costs and economic impacts of emissions controls, technological feasibility, uncertainties and other relevant factors, in making our ample margin of safety determination and deciding whether standards are necessary to reduce risks further. Considering all of this information, we conclude that the costs of the options analyzed are not reasonable considering the emissions reductions and risk reductions potentially achievable with the control measures evaluated. Thus, we conclude that the MACT standards in 40 CFR part 63, subpart HH (coupled with the new MACT standard for small glycol dehydrators) provide an ample margin of safety to protect public health and prevent adverse environmental effects. Accordingly, we are re-adopting those standards to satisfy the requirements of CAA section 112(f).

3. Changes Made to Standards Proposed Under the Authority of CAA Section 112(d)(6)

As discussed in detail in the preamble for the proposed rule (76 FR 52784), we conducted a technology review for glycol dehydration units, storage vessels and equipment leaks under the authority of CAA section 112(d)(6). We assessed developments in practices, processes and control technologies sources for those regulated under the initial NESHAP and determined that it was cost-effective to lower the leak definition for valves at natural gas processing plants. We did not identify developments in practices, processes and control technologies for glycol dehydration units and storage vessels. As a result of this assessment, we proposed revisions to the equipment leak requirements in 40 CFR part 63, subpart HH to lower the leak definition for valves to an instrument reading of at least 500 ppm. No significant changes since proposal were made to the equipment leak standards proposed under the authority of section 112(d)(6) of the CAA.[6]

4. Other Changes to the Proposed Rule

We are revising the emission reduction demonstrated using the manufacturers performance test from 98.0 percent to 95.0 percent. Specifically, if an owner or operator chooses to install a combustion control device that is tested under, and passes, the prescribed manufacturers performance test the final rule states that the control device has demonstrated a destruction efficiency of 95.0 percent. This change is a result of comments and data provided on the actual performance of these devices in the field.

In the proposed rule, we proposed that the standards apply at all times and removed provisions that provided an exemption from the emission standards during SSM. In response to comments that the monitoring and reporting provisions related to excursions occurring during SSM events that remain in the subpart suggest exemption and therefore should be removed, we are removing these provisions in the final rule.

Refer to the Reponses to Comments document, available in the docket, for detailed discussion regarding these changes.

B. What are the significant changes since proposal for the Natural Gas Transmission and Storage (subpart HHH) source category?

1. Changes Made to Amendments Proposed Under the Authority of CAA Sections 112(d)(2) and (3)

Under the authority of sections 112(d)(2) and (3) of the CAA, we proposed amendments to 40 CFR part 63, subpart HHH by adding requirements for previously unregulated units; specifically, we proposed standards for small glycol dehydration units.

In the final amendments for 40 CFR part 63, subpart HHH, we have revised the proposed BTEX limits for small glycol dehydration units in response to comments that we did not take into account variability in the development of the MACT floor. We had proposed a unit-specific BTEX emission limit of 6.42×10^{-5} grams BTEX/scm-ppmv for existing sources and a BTEX limit of 1.10×10^{-5} g BTEX/scm-ppmv for new sources. In the final rule, we accounted for variability by using an upper prediction limit to develop a revised emission limit for existing affected sources of 3.10×10^{-4} g BTEX/scm-ppmv and for new affected sources is a BTEX limit of 5.44×10^{-5} grams BTEX/scm-ppmv. The process for developing these emissions limitations is documented in the response to comments document and a technical memorandum both of which can be found in the docket.

2. Changes to Amendments Proposed Under the Authority of CAA Section 112(f)(2)

We proposed to eliminate the 0.9 Mg/yr benzene compliance option for large glycol dehydration unit process vents because, in the proposed rule, we estimated that the emissions allowed as the result of this compliance option resulted in estimated cancer risks up to 90-in-1-million. In response to comments, we learned that the risk assessment supporting the proposed rule erroneously included some sources that have permanently shut down, and several area sources, which are not subject to 40 CFR part 63, subpart HHH and, thus, should not have been included in the CAA section 112(f) risk assessment. After revising the risk assessment to remove these sources and considering the MACT standards promulgated here pursuant to CAA section 112(d)(2) and (3), the MIR for the Natural Gas Transmission and Storage source category based on actual and allowable emissions is 20-in-1 million, compared to the 90-in-1 million based on allowable emissions and 20-in-1 million based on actual emissions estimated in the proposed rule.

As the result of our revised risk analysis, we have determined that approximately 1,100 people are estimated to have cancer risks at or above 1-in-1 million, compared to 2,500 people estimated in the proposed rule. Total estimated cancer incidence from the source category is 0.001 excess cancer cases per year, or one case in every 1,000 years. This estimate is unchanged from the proposed rule

[6] Memorandum from Brown, Heather, EC/R Inc., to Moore, Bruce, U.S. EPA, titled *Technology Review for the Final Amendments to Standards for the Oil and Natural Gas Production and Natural Gas Transmission and Storage Source Categories.*

because the incidence from a small number of sources typically does not affect total incidence reported to one significant figure. The estimate from the proposed rule of maximum chronic non-cancer TOSHI value (0.2) is unchanged, driven by benzene emissions from fugitive sources. The maximum acute non-cancer hazard quotient value (4, based on the benzene REL) changed from the proposed rule; the value in the proposed rule was 5, but was associated with an area source that was removed from the risk assessment. There are two cases in the source category (out of approximately 300 facilities) where the REL is exceeded by more than a factor of 2.

Based on the conservative nature of the acute exposure scenario used in the screening assessment for this source category, the EPA has judged that, considering all associated uncertainties, the potential for effects from acute exposures is low. Screening estimates of acute exposures were evaluated for each HAP at the point of highest off-site exposure for each facility (*i.e.,* not just the census block centroids) assuming that a person is present at this location at a time when both the peak emission rate and worst-case dispersion conditions occur. Although the REL (which indicates the level below which adverse effects are not anticipated) is exceeded in this case, we believe the potential for acute effects is low for several reasons. The acute modeling scenario is worst-case because of the confluence of peak emission rates and worst-case dispersion conditions. Also, the generally sparse populations near the facilities with the highest estimated 1-hour exposures make it less likely that a person would be near the plant to be exposed.

We also conducted a facility-wide risk assessment. The maximum facility-wide risk estimate of 200-in-1 million is unchanged from the proposed rule. Also unchanged from proposal is the fact that the facility-wide risk is driven by emissions from reciprocating internal combustion engines (RICE) and these engines are not part of the Natural Gas Transmission and Storage source category. In fact, natural gas transmission and storage operations contribute only about one percent or less to the total facility-wide risks. In the last few years, the Agency has revised the MACT standards for certain RICE. See 75 FR 9648 and 51570. Although it is difficult to discern from the available data which types of RICE are driving the facility-wide risk, it is important to note that the 2005 NEI data on which we modeled risk did not take into account the recent MACT revisions to the RICE rule. Finally, our assessment that the potential for significant human health risks due to multipathway exposures or adverse environmental effects is low has not changed since proposal (see 76 FR 52774).

Consistent with the approach established in the Benzene NESHAP, the EPA weighed all health risk measures and information, including the maximum individual cancer risk, the cancer incidence, the number of people exposed to a risk greater than 1-in-1-million, the distribution of risks in the exposed population and the uncertainty of our risk calculations in determining whether the risk posed by emissions from natural gas transmission and storage is acceptable. In this case, because the MIR is well below 100-in-1-million, and because a number of other factors indicate relatively low risk concern, including low cancer incidence, low potential for adverse environmental effects or human health multi-pathway effects, and unlikely chronic and acute noncancer health impacts, we conclude that the level of risk associated with the Natural Gas Transmission and Storage source category MACT standards (including those MACT standards issued here) is acceptable.[7]

In making our proposed ample margin of safety determination under CAA section 112(f)(2), we subsequently evaluated the risk reductions and costs associated with various emissions control options to determine whether we should impose additional standards to reduce risks further. As stated above, we made certain revisions to the risk assessment in response to comments and the resulting MIR for 40 CFR part 63, subpart HHH is 20-in-1 million. We have not identified any emission control options that would reduce emissions and risk associated with subpart HHH sources for glycol dehydration units. Our proposed amendment to remove the 0.9 Mg/yr compliance option does not affect the risk driver, which is fugitive emissions. As a result, we are retaining the 0.9 Mg/yr compliance option in the final rule.

We have determined that the risks associated with the level of emissions allowed by the MACT standards are driven by fugitive emissions (*i.e.,* leaks). Since a LDAR program is the typical method for reducing emissions from fugitive sources, we evaluated the costs and emissions reductions associated with requiring such a program to reduce risk for this source category. The NEI dataset for the natural gas transmission and storage source category contains approximately 314 emission points that we characterized as being fugitive in nature. These emission points are located at 212 facilities. The fugitive emissions associated with those 212 facilities are 187 tons of HAP.

In evaluating the effectiveness of a LDAR program at these facilities we looked at two different LDAR programs—one is a program equivalent to 40 CFR part 60, subpart VV, and the second is a more stringent program equivalent to 40 CFR part 60, subpart VVa.[8] A LDAR program equivalent to subpart VV can achieve emission reductions of approximately 51 percent with capital and annual costs of $361,800 and $142,600 per facility, respectively. Therefore, such a program for 212 facilities would be expected to reduce emissions by 95.4 tons of HAP and have total capital and annual costs of $76.7 million and $30.2 million, respectively. The cost effectiveness would be approximately $317,000 per ton of HAP.

A LDAR program equivalent to 40 CFR part 60, subpart VVa can achieve emission reductions of approximately 78 percent overall with capital and annual costs of $369,500 and $154,300 per facility, respectively. Therefore, a LDAR program for 212 facilities would be expected to reduce emissions by 146 tons of HAP with total capital and annual costs of $78.3 million and $32.7 million, respectively. The cost effectiveness would be approximately $224,000 per ton of HAP. These additional control requirements would reduce the MIR from the source category to approximately 3-in-1 million for the subpart VVa level of control and 7-in-1-million for the 40 CFR part 60, subpart VV level of control.

As explained in the proposal, in accordance with the approach established in the Benzene NESHAP, we weigh all health risk measures and information considered in the risk acceptability determination, along with the costs and economic impacts of emissions controls, technological feasibility, uncertainties and other relevant factors, in making our ample margin of safety determination and

[7] We reach the same conclusion even if we do not consider the new MACT for small glycol dehydrators in our acceptability determination. Indeed, focusing solely on the standards in the existing MACT, the level of risk associated with such standards would remain 20-in-1 million, and thus our acceptability determination would not change. The glycol dehydrators analyzed all had risks well below 20-in-1 million.

[8] See memorandum titled *Equipment Leak Emission Reduction and Cost Analysis for Well Pads, Gathering and Boosting Stations, and Transmission and Storage Facilities Using Emission and Cost Data from the Uniform Standards,* dated April 17, 2012.

deciding whether standards are necessary to reduce risks further. Considering all of this information, we conclude that the costs of the options analyzed are not reasonable considering the emissions reductions and risk reductions potentially achievable with the control measures. Thus, we conclude that the MACT standards in 40 CFR part 63, subpart HHH (coupled with the new MACT standard for small glycol dehydrators) provide an ample margin of safety to protect public health and prevent adverse environmental effects. Accordingly, we are re-adopting those standards to satisfy the requirements of CAA section 112(f)(2).

3. Changes Made to Amendments Proposed Under the Authority of CAA Section 112(d)(6)

As discussed in detail in the preamble for the proposed rule (76 FR 52784), we conducted a technology review for glycol dehydration units under the authority of CAA section 112(d)(6). We did not identify developments in practices, processes and control technologies for large glycol dehydration units. As a result of this assessment, we did not propose amendments to 40 CFR part 63, subpart HHH. We have not made any changes since proposal under the authority of CAA section 112(d)(6).[9] Further discussion on our technology review analysis can be found in section X.C of this preamble, and in the Response to Comments document.

4. Other Changes to the Proposed Rule

We are revising the emission reduction efficiency demonstration using the manufacturer's performance test from 98.0 percent to 95.0 percent. Specifically, if an owner or operator chooses to install a combustion control device that is tested under, and passes, the prescribed manufacturer's performance test, the final rule states that the control device has demonstrated a reduction efficiency of 95.0 percent. This change is a result of comments and data provided on the actual performance of these devices in the field.

In the proposed rule, we proposed that the standards apply at all times and removed provisions that provided an exemption from the emission standards during SSM. In response to comments that the monitoring and reporting provisions related to excursions occurring during SSM events that remain in the subpart suggest exemption and therefore should be removed, we are removing these provisions in the final rule.

VIII. Compliance Related Issues Common to the NSPS and NESHAP

A. How do the rules address startup, shutdown and malfunction?

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), cert. denied, 130 S. Ct. 1735 (U.S. 2010). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that are part of a regulation, commonly referred to as the ''General Provisions Rule,'' that the EPA promulgated under section 112 of the CAA. When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112(d) emission standard during periods of SSM.

As proposed in the NESHAP, we have eliminated the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* the EPA has established standards in both rules that apply at all times. We have also revised Table 3 (the NESHAP General Provisions table) in several respects. For example, we have eliminated the incorporation of the NESHAP General Provisions' requirement that the source develop an SSM plan. We have also eliminated or revised certain NESHAP recordkeeping and reporting that related to the SSM exemption. The EPA has attempted to ensure that we have not included in the regulatory language, for the NSPS and NESHAP, any provisions that are inappropriate, unnecessary or redundant in the absence of the SSM exemption.

In establishing the standards in both rules, the EPA has taken into account startup and shutdown periods and, for the reasons explained in section IX of this preamble for the NSPS and in section X of this preamble for the NESHAP, did not establish different standards for those periods. Based on the information available in the record about actual operations during startups and shutdowns, we believe that operations and emissions do not differ from normal operations during these periods such that it warrants a separate standard. Therefore, we have not proposed different standards for these periods.

Periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * * '' (40 CFR 63.2) and as ''any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner * * *'' (40 CFR 60.2). The EPA has determined that CAA sections 111 and 112 do not require that emissions that occur during periods of malfunction be factored into development of CAA section 111 or 112 standards.

CAA section 111 standards—See section III of this preamble for a detailed discussion on how the EPA sets or revises CAA section 111 NSPS to reflect the degree of emission limitation achievable through the application of the BSER.

CAA section 112 standards—Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources, generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. Nothing in CAA section 112 directs the agency to consider malfunctions in determining the level ''achieved'' by the best performing or best controlled sources when setting emission standards. Moreover, while the EPA accounts for variability in setting emissions standards consistent with the CAA section 112 case law, nothing in that case law requires the agency to consider malfunctions as part of that analysis. CAA section 112 uses the concept of ''best controlled'' and ''best performing'' unit in defining the level of stringency that CAA section 112 performance standards must meet. Applying the concept of ''best controlled'' or ''best performing'' to a unit that is malfunctioning presents significant difficulties, as malfunctions are sudden and unexpected events.

Further, accounting for malfunctions in setting NESHAP or NSPS standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v.

[9] See footnote 6.

EPA, 167 F.3d 658, 662 (D.C. Cir. 1999) (''[T]he EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.' ''); see, also, *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, in the NESAHP context, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. Similarly, in the NSPS context, accounting for malfunctions when setting standards of performance under CAA section 111, which reflect the degree of emission limitation achievable through ''the application of the best system of emission reduction'' that the EPA determines is adequately demonstrated could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. The EPA's approach to malfunctions is consistent with CAA section 112 and CAA section 111 and is a reasonable interpretation of the statute.

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause a violation of the relevant emission standard. See, *e.g., State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown* (September 20, 1999); *Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (February 15, 1983). The EPA is, therefore, adding to the final NSPS and NESHAP an affirmative defense to civil penalties for violations of emission standards that are caused by malfunctions. See 40 CFR 63.761 for sources subject to the Oil and Natural Gas Production MACT standards; 40 CFR 63.1271 for sources subject to the Natural Gas Transmission and Storage MACT standards (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 have added other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; a source subject to the Oil and Natural Gas Production or Natural Gas Transmission and Storage MACT standards must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 63.762 and a source subject to the Natural Gas Transmission and Storage NSPS must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 60.41Da (NSPS). See 40 CFR 22.24. The criteria ensure that the affirmative defense is available only where the event that causes a violation of the emission standard meets the narrow definition of malfunction in 40 CFR 60.2 (NSPS) and 40 CFR 63.2 (NESHAP), respectively, (sudden, infrequent, not reasonably preventable and not caused by poor maintenance and/or careless operation). For example, the final NSPS and NESHAP provide that to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that the violation ''[w]as caused by a sudden, infrequent, and unavoidable failure of air pollution control and 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 63.762 for sources subject to the Oil and Natural Gas Production MACT standards, 40 CFR 63.1272 for sources subject to the Natural Gas Transmission and Storage MACT standards, and 40 CFR 60.5415(h) for the Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, and to prevent future malfunctions. For example, the final NSPS and NESHAP provide that the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when a violation occurred * * *'' and that ''[a]ll possible steps were taken to minimize the impact of the violation 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 part 22.27).

The EPA proposed and is now finalizing an affirmative defense in the final NSPS and NESHAP in an attempt to balance a tension, inherent in many types of air regulations, to ensure adequate compliance, while simultaneously recognizing that, despite the most diligent of efforts, emission standards may be violated 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 standards are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that, even where there is a malfunction, the emission standard is still enforceable through injunctive relief. While ''continuous'' standards, on the one hand, are required, there is also case law 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 Ass'n* v. *Ruckelshaus,* 486 F.2d 375 (D.C. Cir. 1973). Though intervening case law such as *Sierra Club* v. *EPA* and the CAA 1977 amendments call 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 violations 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); see, also, *Mont. Sulphur & Chem. Co.* v. *EPA,* 2012 U.S. App. LEXIS 1056 (Jan 19, 2012) (rejecting industry argument that reliance on the affirmative defense was not adequate). *But see Weyerhaeuser Co.* v. *Costle,* 590 F.2d at 1057–58 (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission standards 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.

Refer to preamble section IX for the NSPS, preamble section X for the NESHAP and the Response to Comments document for both the NSPS and the NESHAP, available in the docket, for detailed discussions regarding these changes.

B. How do the NSPS and NESHAP provide for compliance assurance?

The final rule includes various notification, recordkeeping and reporting requirements that we believe provide a robust compliance assurance program, while reducing burden and streamlining requirements. The EPA also considered a variety of innovative compliance approaches that could maximize compliance and transparency, while minimizing burden on the regulated community and regulators. More detailed information on public comments received and the EPA's responses are included in sections IX and X of the preamble or in the response to comments document.

1. Notification, Recordkeeping and Reporting Requirements

For well completions, owners or operators are required to submit an email notification no later than 2 days prior to each anticipated well completion. The notification must identify the owner or operator and provide the American Petroleum Institute (API) well number, geographical coordinates of the affected wells and the estimated date of commencement of the flowback period immediately following hydrofracturing. The owner or operator must keep records identifying each well completion operation and documenting the portions of the flowback period when the gas was recovered, combusted or vented.

Annually, owners or operators of all affected facilities under the NSPS, including gas wells, compressors, pneumatic controllers, storage vessels and gas processing plants, must report any deviation from the NSPS requirements during the reporting period. Each annual report must include a signed certification by a senior company official that attests to the truth, accuracy and completeness of the report. For affected gas wells, the report must also identify each well completion conducted during the reporting period and submit detailed completion records for each well as part of the annual report.

In the final rule, the recordkeeping and reporting requirements for well completions also provide a streamlining option that owners and operators may choose in lieu of the standard annual reporting requirements. The alternative, streamlined annual report for gas well affected facilities requires submission of a list, with identifying information of all affected gas wells completed, electronic or hard copy photographs documenting REC in progress for each well for which REC was required and the self-certification required in the standard annual report. The operator retains a digital image of each REC in progress. The image must include a digital date stamp and geographic coordinates stamp to help link the photograph with the specific well completion operation. The owner or operator is not required to submit detailed completion records as part of the annual report.

For centrifugal compressors with wet seal systems, the annual report must include identification of each affected facility constructed, modified or reconstructed during the reporting period. The annual report for reciprocating compressors must identify each reciprocating compressor constructed, modified or reconstructed during the reporting period. The report also must include, for each affected compressor, the elapsed time of operation since the most recent rod packing change as of the end of the reporting period. For affected pneumatic controllers and storage vessels, the annual report must identify each affected facility constructed, modified or reconstructed during the reporting period.

Owners or operators who conduct certain performance tests on control devices must report results of those tests using the Electronic Reporting Tool (ERT). Further discussion of reporting of emissions tests is presented in section VIII.D of this preamble.

NESHAP

The final amendments to 40 CFR part 63, subparts HH and 40 CFR part 63, subpart HHH revise certain recordkeeping requirements. Specifically, facilities using carbon adsorbers as a control device are now required to keep records of their carbon replacement schedule and records of each carbon replacement. We are requiring that owners and operators that use a manufacturer's tested control device keep records of visible emissions readings and flowrate calculations and records of periods when the pilot flame is absent. The final amendments require records of the date of each semi-annual maintenance inspection be maintained. Finally, owners and operators are required to keep records of the occurrence and duration of each malfunction or operation of the air pollution control equipment and monitoring equipment.

In conjunction with the final MACT standards for small glycol dehydration units, owners and operators of such units are required to submit an initial notification within 1 year after becoming subject to 40 CFR part 63, subpart HH or by October 15, 2013, whichever is later.

Similarly, in conjunction with the final MACT standards for small glycol dehydration units in the final 40 CFR part 63, subpart HHH amendments, owners and operators of small glycol dehydration units are required to submit an initial notification within 1 year after becoming subject to subpart HHH or by October 15, 2013, whichever is later.

The final amendments to 40 CFR part 63, subpart HH and 40 CFR part 63, subpart HHH include new requirements for the contents of Notification of Compliance Status Reports. The owners and operators are required to include an electronic copy of the performance test results for the manufacturer's tested control device, if applicable; the predetermined carbon replacement schedule for carbon adsorbers, if applicable; and data related to the manufacturer's performance tests conducted for certain models of control devices, if compliance is being achieved using the manufacturer's performance tests.

The final amendments to the NESHAP also include additional requirements for the contents of periodic reports. Each semiannual report must include a signed certification by a senior company official that attests to the truth, accuracy and completeness of the report. For both 40 CFR part 63, subpart HH and 40 CFR part 63, subpart HHH, in the final amendments, periodic reports are

required to include periodic test results and information regarding any carbon replacement events that occurred during the reporting period. Owners and operators are also required to include in the periodic reports information regarding any excursions that occur when the inlet gas flow rate deviates from that identified in the manufacturer's performance test, and any excursions caused when visible emissions exceed the maximum allowable duration.

Owners or operators who conduct certain performance tests on control devices must report results of those tests using the ERT. Further discussion of reporting of emissions tests is presented in section VIII.C below.

2. Innovative Compliance Approaches

At proposal, given the number and diversity of sources potentially affected by the NSPS and/or the NESHAP, we solicited comments on optional compliance tools that could reduce compliance burden and enhance transparency. Specifically, we asked for suggestions on: (1) Registration of wells and advance notification of planned completions; (2) use of third party verification; and (3) electronic reporting using existing mechanisms. We received comments on each of the topics above and have presented summaries of those comments and the EPA's responses in the Response to Comments document. The commenters were generally opposed to third party verification. However, one suggestion was a voluntary random verification program, similar to one used in the past for gasoline marketing, where operators who participated in this program potentially could receive lower priority for enforcement inspections by regulators. Other suggested innovative approaches include use of social media, including Facebook and Twitter, plus new technologies such as quick response codes, to provide timely public notification and access to compliance records for individual wells and other affected facilities. Other suggestions included use of a centralized database for industry and public access to compliance information. Further discussion of these approaches is provided in the response to comments. While we considered these suggestions, we did not adopt them in the final rule, for reasons explained further in the Responses to Comments document.

C. What are the requirements for submission of performance test data to the EPA?

The EPA must have performance test data to conduct effective reviews of CAA sections 111, 112 and 129 standards, as well as for many other purposes, including compliance determinations, emission factor development and annual emission rate determinations.

As stated in the proposal preamble, the EPA is taking a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is requiring owners and operators of oil and natural gas sector facilities to submit electronic copies of required performance test reports.

As mentioned in the proposal preamble, data entry will be conducted through an electronic emissions test report structure called the ERT. The ERT will generate an electronic report which will be submitted to the EPA's Central Data Exchange (CDX) through the Compliance and Emissions Data Reporting Interface (CEDRI). 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 performance test data electronically to the EPA does not create any additional performance testing and would apply only to those performance tests conducted using test methods that are supported by the ERT. A list of the pollutants and test methods supported by the ERT is available at *http://www.epa.gov/ttn/chief/ert/index.html*.

The major advantages of electronic reporting are more fully explained in the proposal preamble.

An important benefit of using the ERT is that the performance test data will become available to the public through WebFIRE. Having such data publicly available enhances transparency and accountability.

In summary, in addition to supporting regulation development, control strategy development and other air pollution control activities, having an electronic database populated with performance test data will save industry; state, local and tribal agencies; and the EPA significant time, money and effort while improving the quality of emission inventories and, as a result, air quality regulations.

IX. Summary of Significant NSPS Comments and Responses

For purposes of this document, the text within the comment summaries was provided by the commenter(s) and represents their opinion(s), regardless of whether the summary specifically indicates that the statement is from a commenter(s) (*e.g.,* ''The commenter states'' or ''The commenters assert''). The comment summaries do not represent the EPA's opinion unless the response to the comment specifically agrees with all or a portion of the comment.

A. Major Comments Concerning Applicability

1. Activities That Constitute a Modification

Comment: Referring to the definition of ''modification'' in section 111(a)(4) of the CAA, one commenter asserts that a modification occurs only if two things happen: (1) There must be a ''physical change or change in the method of operation,'' and (2) the change must result in an emissions increase.

The commenter states that, in the context of the New Source Review program, the District of Columbia Circuit Court has opined that ''Congress's use of the word 'any' in defining a 'modification' means that all types of 'physical changes' are covered'' (*New York* v. *EPA,* 443 F.3d 880, 890 (D.C. Cir. 2006)) and that the District of Columbia Circuit Court has determined that ''the plain language of the CAA indicates that Congress intended to apply NSR to changes that increase actual emissions instead of potential or allowable emissions.'' *New York* v. *EPA,* 413 F.3d 3, 40 (DC Cir. 2005).

However, according to the commenter, the Supreme Court has concluded that the CAA section 111 definition of modification does not have to have the same meaning under the NSPS and New Source Review (NSR) programs (*Environmental Defense* v. *Duke Energy Corp.,* 127 S. Ct. 1423, 1434 (2007)), and, thus, the EPA has latitude within the context of CAA section 111 to implement different rules regarding modifications.

The commenter believes, in particular, that the EPA's regulatory definition of ''modification'' under the NSPS program provides several categories of activities that alone, are not to be considered modifications, including ''maintenance, repair, and replacement which the Administrator determines to be routine for a source category,'' and ''an increase in production rate that can be accomplished without a capital expenditure.'' 40 CFR 60.14(e). The commenter believes these provisions reflect the fact that Congress established the NSPS program for ''new'' sources. According to the commenter, without these exclusions, even the most minor activities would convert an existing source into a ''new source.'' The commenter states that the premise behind characterizing these activities as

not being ''changes'' is that they all contemplate that the plant will continue to be operated in a manner consistent with its original design and, thus, is not a ''new'' facility.

We also received a number of comments objecting to consideration of recompletion activities [10] as modifications, claiming that it is a significant departure from the definition of ''modification'' under the General Provision at 40 CFR 60.14. Some commenters argue that well completion expenditures do not meet the regulatory definition of ''capital expenditure'' while others argue that they are maintenance activities excluded in 40 CFR 60.14 others note that we have not traditionally regulated temporary ''construction'' activities.[11]

Response: In this final rule, the EPA addresses modifications in the context of well completions and has deleted the proposed definition of ''modification,'' though the underlying rationale presented in the proposal remains, and we are providing alternative regulatory text. Pursuant to this final rule and as discussed below, well completions conducted on gas wells that are refractured on or after the effective date of this rule are considered modifications and subject to the NSPS, with the exception of such well completions that, immediately upon flowback, use emission control techniques otherwise required for new wells and satisfy other requirements for gas well facilities, including notification, recordkeeping and reporting requirements.

As discussed in the proposal, the EPA has chosen to depart from the definition of modification in 40 CFR 60.14 with respect to regulation of wells that primarily produce natural gas. As explained in the proposal and elsewhere in the preamble for this rule, the VOC emissions from the flowback following refracturing of gas wells are significant, the EPA has identified cost-effective controls to reduce VOC emissions during this operating phase, and these controls are required for only a relatively short time during the well's operating life. The EPA therefore concludes that it is appropriate for treatment of these activities to depart from the definition of modification in 40 CFR 60.14 to ensure that emissions from these activities are controlled.

We do not in this package question the broad appropriateness of the NSPS General Provisions at 40 CFR 60.14. However, as the General Provisions on modification in 40 CFR 60.14 themselves recognize, they may not be appropriate in all cases. Given the significant, although short-term, increase in emissions from flowback caused by refracturing activities when such activities are not controlled, and the cost-effective nature of the control on such emissions, we have concluded that covering these refracturing activities is appropriate even if it requires departing from the General Provisions' definition of modification.

Specifically, we are providing in the final rule at 40 CFR 60.5365:

(h) The following provisions apply to gas well facilities that are hydraulically refractured.

(1) A gas well facility that conducts a well completion operation following hydraulic refracturing is not an affected facility, provided that the requirements of § 60.5375 are met. For purposes of this provision, the dates specified in § 60.5375(a) do not apply, and such facilities, as of the effective date of this rule, must meet the requirements of § 60.5375(a)(1)–(4).

(2) A well completion operation following hydraulic refracturing at a gas well facility not conducted pursuant to § 60.5375 is a modification to the gas well affected facility.

(3) Refracturing of a gas well facility does not affect the modification status of other equipment, process units, storage vessels, compressors, or pneumatic controllers located at the well site.

(4) Sources initially constructed after August 23, 2011, are considered affected sources regardless of this provision.

As a result of this provision, a modification of a well, defined as ''an onshore well drilled principally for production of natural gas,'' occurs when a well is refractured on or after the effective date of this rule, except when the owner or operator of a well controls emissions during the completion operation by the use, immediately upon flowback, of emission control techniques otherwise required for new wells, as discussed more below.[12]

Consistency With the Definition of Modification

This provision is consistent with the statutory definition of modification contained in CAA 111(a)(4).[13] As discussed in the proposal, CAA section 111(a)(4) defines a modification based on two requirements: (1) A physical change and (2) an emissions increase. The consistency of our approach with these two elements is discussed below.

Physical Change

Uncontrolled completion following refracturing of gas wells fits well within the statutory definition of modification (the refracturing results in a physical change which causes flowback and an increase in emissions relative to the emissions level prior to the refracturing). Accordingly, the NSPS' treatment of modification applies to completions of hydraulically refractured gas wells.

One commenter contends that recompletion does not constitute physical change even if there is re-perforation because it is an expected part of well operation. However, both the CAA and our regulation define modification to mean ''physical change'' without providing any qualification to that term, thus indicating that the term ''physical change'' is very broad to include any physical change. The commenter's interpretation of the term ''physical change'' is without support.

Emissions Increase

As a result of these physical changes, a multi-day period of flowback of natural gas, hydrocarbon condensate, water and sand is necessary to clean up the formation and wellbore prior to production of gas for sale. This flowback period is characterized by release of substantial amounts of VOC-containing natural gas and hydrocarbon condensate that would not have occurred absent the refracturing operation, thus meeting the second part of the statutory test—an increase in the amount of emissions.

As discussed in the proposal, EPA's data indicate that uncontrolled well completions with hydraulic refracturing consistently result in VOC emissions that were not present prior to such activities. Data in comments received also confirm that these uncontrolled

[10] At proposal, EPA used the term ''recompletion'' to describe completions of previously fractured new gas wells that are refractured at some future date, and we specified that such actions are considered modifications. In addition, we used the term ''recompletion'' to describe completions of existing wells (*i.e.,* those wells that were constructed before August 23, 2011) that subsequently are fractured for the first time or that are refractured.

[11] We disagree with the commenter. Fracturing and refracturing are not maintenance activities. On the contrary, these are essential processes that allow production of gas from shale and other formations, either during the initial development of a well or in development of new horizons within a previously fractured well. We also disagree with the characterization that we are regulating ''construction activities.'' Rather we are regulating the emissions resulting from the physical change.

[12] While we have not done so often, in situations such as this, where there is a defined set of physical changes that inevitably lead to an emissions increase, regulatory certainty and clarity can be provided by, as EPA is doing, providing a categorical listing of activities that constitute modifications. See, *e.g.,* 40 CFR 60.751 (addressing landfills; definition of modification); 40 CFR 60.100a(c) (addressing refineries; stayed pending reconsideration).

[13] We need not address if *New York* v. *EPA,* 443 F.3d 880, 890 (D.C. Cir. 2006) compels the result here. As we explain, in the body of this preamble our approach is consistent with CAA section 111(a)(4), and we provide a reasonable rationale for adopting the approach we take here.

refracturing activities result in significant VOC emissions. Our data indicate very low VOC emissions from gas wells (2.6 tpy on average) at the wellhead during ongoing production prior to such activities. In light of the above, we reasonably conclude that such activities result in an increase in the amount of VOC emissions and, therefore, constitute a modification.

We reject the comments suggesting that we should adopt the prior fracturing activity as the baseline for determining if an emission increase has occurred.[14] We note that these comments appear in part to rely upon a misunderstanding of the EPA's longstanding practice that the relevant baseline for determining an emissions increase under the NSPS is not based on the potential emissions profile associated with a prior physical change or the original construction but rather the emissions immediately prior to the physical change. See 57 FR 32314, 32330 (July 21, 1992) (explaining that, under CAA section 111(a), an emission increase is based on current potential emissions rather than original design capacity). Accordingly, under historical regulations, the proposed regulatory language and the final rule that ''initial production volumes may have been higher than subsequent re-completions or refracturing operations because the formation has been depleted by production activities'' does not mean that there would not be an emissions increase. Ongoing emissions during day-to-day production are very small and are not a function of well productivity, since these emissions originate from leaking valves and other components that do not leak more or less as production increases or declines. However, flowback emissions following refracturing are orders of magnitude greater than the production phase emissions.

Moreover, adoption of a prior fracturing activity as the baseline for comparison here is inappropriate. The purpose of the refracturing activity is to increase production from its current level. As explained above, at least for the short term, VOC emissions from the affected facility increase as a direct result of the physical change.[15] That is, these emissions would not have (and could not have) occurred without the physical change. Accordingly, we conclude that reliance on the prior fracturing activity as a baseline is inappropriate.[16]

De Minimis Exception

We recognize that there are reasons to limit the scope of the modification definition so as to not include certain well-controlled refracturing activities performed by sources. We recognize that the approach that we are taking in this final rule differs from the approach that we have taken in the past, as it excludes certain emission increases associated with a physical change from constituting a modification based on the *de minimis* exception. This exception allows agency flexibility in interpreting a statute to prevent ''pointless expenditures of effort'' and has been previously recognized by the United States Court of Appeals for the District of Columbia Circuit as an appropriate tool when interpreting the CAA section 111(a)(4) definition of modification in the context of New Source Review. *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360 (D.C. Cir. 1979).

Since the inception of the NSPS program, certain emission controls could be used by a source to avoid having an activity constitute a modification provided that the controls prevented emissions from increasing. As the District of Columbia Circuit explained:

> Under provisions of the regulations that are not challenged in this litigation, the operator of an existing facility can make any alterations he wishes in the facility without becoming subject to the NSPS as long as the level of emissions from the altered facility does not increase. Thus the level of emissions before alterations take place, rather than the strict NSPS, effectively defines the standard that an altered facility must meet.

Asarco Inc. v. *EPA,* 578 F.2d 319, 328–29 (D.C. Cir. 1978); see, also, 75 FR 54970, 54996 (September 9, 2010) (''However, sources always have the option of adding sufficient NO_X control to avoid an hourly emissions increase and avoid thus triggering the modification provision.''). We have allowed such controls to permit the source to avoid being considered ''modified'' if the controls fully negate the emissions increase.

In this case, we are providing that where a source has in place, and, immediately upon flowback, applies emission controls equivalent to those required for a new source (as specified in 40 CFR 60.5375(a)(1) through (4)), the physical change will not constitute a modification despite the small remaining emission increase. Specifically, well completions conducted by sources for refractured wells and with the use, immediately upon flowback, of emission controls equivalent to those required for new sources will not be considered a modification, due to the *de minimis* increase in emissions of such wells using these controls. Several unique factors justify finding that application of the *de minimis* doctrine is appropriate here.

First, to qualify for the exclusion from the definition of modification the source must be using controls equivalent to those required were it to trigger the NSPS. As a result, the imposition of the NSPS would not yield additional regulatory or environmental benefits. See *Environmental Defense Fund, Inc.* v. *EPA,* 82 F.3d 451, 466 (D.C. Cir. 1996). Second, as a result of imposition of controls emissions are very low in magnitude. This is both with respect to the size of the increase associated with the physical change and the total emissions from the unit after the physical change. Third, the emissions associated with the change, and peak emissions post change, are time-limited. A well completion is a discrete activity, occurring over a 3–10-day period on an occasional basis, which may be as infrequent as once every 10 years. This is different from the type of emitting activity typically regulated as a modification under NSPS, which would involve ongoing emissions indefinitely into the future. Further, a source qualifying for this exception must comply with the recordkeeping and reporting requirements that are required of new sources. Accordingly, the increase in emissions from the physical

[14] One commenter relies on a passage from a proposed, but never finalized, rule preamble to argue that under the NSPS emission increase test prechange emissions are based on the highest level achievable in the 5 years immediately preceding a physical change. The passage, however, is not addressing the NSPS test generally applicable to modifications, but, rather, is addressing a specific regulatory provision applicable to modifications at electric utility steam generating units (EUSGU). See 70 FR 61081, 61089 (October 20, 2005). Specifically, the preamble discussion is describing 40 CFR 60.14(h), which states that a change at an EUSGU will not be a modification if ''such change does not increase the maximum hourly emissions achievable at the unit during the five years prior to the change.'' See, also, 57 FR 32314, 32330 (July 21, 1992) (adopting 40 CFR 60.14(h) and contrasting the provision with the pre-existing test).

[15] Our data show that the magnitude of ongoing VOC emissions from a producing gas well is approximately 2.6 tpy or about 14 pounds per day, while the magnitude of VOC emissions is 23 tons over an average period of 7 days, or about 6,600 pounds per day, during a completion operation following refracturing. At this time, we do not have similar data on emissions from oil wells.

[16] One commenter claims that one cannot determine whether a given well completion activity qualifies as a modification based on the proposed definition because it is infeasible to measure the amount of flowback emission according to the EPA in proposing a work practice standard. However, nothing in CAA 111(a)(4) and 40 CFR 60.2 requires quantification of the amount of emission increase, only that there be an increase as a result of the physical change. In addition, the commenter's argument would appear to apply equally to any time we set a work practice.

change, and the total amount of additional emissions, will be very small.

We are providing the *de minimis* exception discussed above to provide states with flexibility in application of their permitting authority and resources. Commenters pointed out that a number of state permitting programs are triggered for sources that are subject to an NSPS as a result of a modification. The EPA recognizes that states are the most appropriate entities to determine whether and how sources should be permitted, and we have concern regarding potential impacts of this final rule on states' permitting resources. Accordingly, with this final rule, we intend that states retain the discretion to determine whether refracturing activities by sources employing control techniques that are required for new wells will require changes in that source's permit status.

Clarifying Changes

Although we are not finalizing the proposed definition of ''modification'' for the reasons discussed above, we believe it is important to address certain comments regarding the proposed definition in order to clarify the agency's intent as it relates to well completions. For example, we included ''natural gas'' in the proposed definition for ''modification'' in recognition that our proposed work practice requirements for well completions use natural gas as a surrogate for VOC. We consider natural gas to be an appropriate surrogate for VOC for well completion activities because our analyses of data on composition of natural gas at the wellhead indicated that emissions of natural gas during well completions contain various chemical species that are VOC. The inclusion of natural gas in the proposed definition for modification was not an indication that EPA was proposing natural gas as a pollutant to be regulated, as some commenters mistakenly thought.

We also received comment objecting to defining ''modification'' based on increase in the ''amount of emission'' instead of ''emission rate'' as provided in the General Provisions for modifications in 40 CFR 60.14. We had intended but were not clear in our proposed rule that the definition would apply only to well completions. In the final rule, we have promulgated the provisions discussed above regarding well provisions in lieu of the proposed definition for modification to clarify our intent.

Finally, this provision is intended to address comments suggesting confusion associated with our proposed definition of ''modification'' and the separate, proposed provision in 40 CFR 60.5420 that a workover is considered a modification. The second of these provisions is being removed in light of comments that there is no common understanding of this term and, as a result, it may be interpreted to cover more than the fracturing activities the EPA intended to cover.[17]

In summary, as a result of the comments and considerations discussed above, the final rule provides that well completions conducted on gas wells that are refractured on or after the effective date of this rule are modifications and are subject to the NSPS. However, gas wells that undergo completion following refracturing, with the use, immediately upon flowback, of emission control techniques otherwise required for new wells and that satisfy other requirements for gas well facilities, including notification, recordkeeping and reporting requirements, are not considered modified and, as a result, are not affected facilities under the NSPS. This provision is consistent with the NSPS program's history of allowing sources to use certain emission controls to avoid having an activity constitute a modification. In this situation, we consider it appropriate to require notification, recordkeeping and reporting requirements in order to ensure that a source is meeting the requirements to avail itself of this provision. We believe this approach will encourage early use of REC and will result in 1,000 to 1,500 REC that would not otherwise occur during the REC phase-in period ending January 1, 2015, discussed in section IX.B of this preamble.

2. Regulation of Methane and Other Pollutants

Comment: One commenter believes that under CAA section 111, the EPA must regulate each dangerous pollutant emitted by sources in the oil and gas source category in more than *de minimis* quantities for which controls are available and asserts that the EPA has failed to do so. In particular, the commenter states that the EPA must regulate methane, particulate matter (PM), hydrogen sulfide and nitrogen oxides (NO_X) from oil and gas operations. The commenter states that the EPA's explanation of why it declined to regulate certain pollutants does not discuss PM or hydrogen sulfide, address the most important sources of NO_X or offer a legal justification for its failure to regulate methane. The commenter interprets the CAA to mean that the EPA must, every 8 years, (1) review its standards (as it has done here), (2) determine whether it is ''appropriate'' to revise them, including whether it is appropriate to add additional pollutants to the standards, and (3) if so, revise them accordingly.

Response: In this rule, we are not taking final action with respect to regulation of methane. Rather, we intend to continue to evaluate the appropriateness of regulating methane with an eye toward taking additional steps if appropriate. On November 8, 2010, EPA finalized reporting requirements for the petroleum and natural gas industry under 40 CFR Part 98, the regulatory framework for the Greenhouse Gas Reporting Program (GHGRP). Beginning in September 2012, this program requires annual reporting of greenhouse gases (GHG) from large emissions sources and fuel suppliers in the United States. Petroleum and natural gas facilities will report annual methane and carbon dioxide (CO_2) emissions from equipment leaks and venting, and emissions of CO_2, methane and nitrous oxide from flaring, onshore production stationary and portable combustion emissions, and combustion emissions from stationary equipment involved in natural gas distribution. The EPA estimates that the rule will cover 85 percent of the total GHG emissions from the United States petroleum and natural gas industry with approximately 2,800 facilities reporting. The data submitted under the GHGRP will provide important information on the location and magnitude of GHG emissions from petroleum and natural gas systems and will allow petroleum and natural gas facilities to track their own emissions, compare them to similar facilities and aid in identifying cost-effective opportunities to reduce emissions in the future.

As noted in the proposal, the control measures that the EPA is requiring for VOC result in substantial methane reductions as a co-benefit. Over time, collection of data through the GHGRP and other sources will help EPA evaluate whether it is appropriate to directly regulate methane from the oil and gas sources covered by this rule. The EPA will be in a better position to characterize (1) the extent of methane emissions from these sources that will remain after imposition of controls

[17] We are not considering ''workovers'' to be modifications because: (1) They include truly routine activities; (2) in most instances we would anticipate only a small emissions increase, if any; and (3) we have no reason to think that these wells differ in emission profile or control options from non-fractured wells (or fractured wells after flow back), and accordingly we have not identified a BSER that would apply following any such modification.

required by this rule; and (2) whether additional measures are available and appropriate for addressing such emissions.

With regard to other pollutants, including PM, H_2S and NO_X, many of the sources of PM and NO_X within the Crude Oil and Natural Gas Production source category are within the scope of units covered by other NSPS and will be evaluated in the context of subsequent revisions of those rules, if appropriate. This approach is consistent with what the agency articulated when we promulgated the original oil and gas rules. See 49 FR 2637. For example, NSPS covering stationary reciprocating internal combustion engines (40 CFR part 60, subparts IIII and JJJJ) and combustion turbines (40 CFR part 60, subpart KKKK) regulate emissions of PM and NO_X from sources found in this category. These engines and turbines are found in a variety of locations in this category including gathering and boosting stations, natural gas processing plants and natural gas transmission and storage facilities. In addition, some mobile source regulations (40 CFR part 1039) cover nonroad engines such as those used on drilling rigs, electrical generators and hydraulic fracturing pumps. As we discussed at proposal (see 76 FR 52756) most, if not all, of the process heaters and boilers used in this category fall below applicability thresholds for EPA's boiler rules (40 CFR part 60, subparts Db and Dc). Although these smaller heaters and boilers are generally within the scope of this category, we received no quantitative data in the public comments on NO_X or PM emissions from these units. Given the broad coverage of the PM and NO_X sources in this category by other NSPS we did not depart from the approach adopted in 1984 of considering these pollutants in development of other standards.

Although the NSPS does not provide direct regulation of H_2S, the VOC control requirements in the final rule achieve reductions of H_2S a co-benefit in cases where H_2S is otherwise emitted in the oil and natural gas production segment. While amine treatment and sulfur recovery are routinely employed both upstream and at natural gas processing plants to remove H_2S from the natural gas stream, we believe that it would not be reasonable or cost-effective to require amine units and sulfur recovery for every emission point in the oil and natural gas production segment. We received no public comments suggesting other control technologies that could be applied to control H_2S in the field. Such emissions occur in the field as fugitive emissions at the wellhead and vented emissions from well completions, storage vessels, pneumatic controllers and compressors. However, as mentioned above, the VOC control measures provided in the final rule for well completions, storage vessels, pneumatic controllers and compressors greatly reduce any H_2S emissions along with the VOC emissions controlled.

3. Expanded Scope of the Source Category

Comment: One commenter states that, in the preamble, the EPA makes reference to its proposal to significantly expand the scope of oil and gas operations that would be covered by the new NSPS, and states that ''[t]o the extent that there are oil and gas operations not covered by the currently listed Oil and Natural Gas source category, pursuant to CAA section 111(b) we hereby modify the category list to include all operations in the oil and natural gas sector'' (citing 76 FR 52745, August 23, 2011). The commenter is not aware of any authority pursuant to which the EPA may affect a significant expansion of the category list merely through the language of the preamble in an NSPS rulemaking. The commenter states that, in a related context, the CAA requires that the EPA engage in consultation with state governors and air pollution control agencies, suggesting that more than a preamble reference is needed in order to expand the category list and impose NSPS requirements on the new and unique affected sources addressed in this rule. See 42 U.S.C. 7411(f)(3). The commenter asserts that the sources the EPA seeks to regulate are different types of stationary sources than gas processing plant, and contends that oil and gas production wells are stationary sources, but are, clearly, not processing plants.

Response: Because EPA has concluded that the currently listed Oil and Natural Gas source category covers at least those operations in this industry for which we are finalizing standards, we need not address what steps the agency must take if expanding a source category.[18] As we explained in the preamble to the proposed rule, when the EPA initially listed this source category, it did so in a document where it described its listings as broad. 76 FR at 52745.[19] Contrary to commenters assertions, the EPA has viewed this source category listing very broadly. Specifically, when promulgating the first sets of standards of performance for this source category, we stated that the source category ''encompass[es] the operations of exploring for crude oil and natural gas products, *drilling for these products, removing them from beneath the earth's surface,* and processing these products from oil and gas fields for distribution to petroleum refineries and gas pipelines.'' 49 FR at 2637 (emphasis added). That preamble linked the endangerment finding under CAA section 111(a) to the industry as a whole: ''The crude oil and natural gas production *industry* causes or contributes significantly to air pollution that may reasonably be anticipated to endanger public health or welfare'' (*Emphasis added*). 49 FR 2636. The statements above affirm our conclusion that the currently listed Oil and Natural Gas source category covers all operations for which we are setting standards. That the original NSPS's only set standards for a limited set of sources within the category cannot be taken to imply that other units were not within the scope of this original listing. See, *e.g., Nat'l Lime Ass'n* v. *EPA,* 627 F.2d at 426 n. 27 (noting that the EPA set standards for only certain kiln types within the source category). Indeed, the preamble to the 1984 proposed NSPS rule directly addresses regulation of wells, concluding that the agency was not setting standards at that time; not because they were outside the scope of the source category, but because the agency was unable at that time to identify ''[b]est demonstrated control technology.'' 49 FR at 2637. As all of the units that we are regulating fall within the scope of the original listing, we need not address what steps would be necessary were we to expand the scope of the listing.

B. Major Comments Concerning Well Completions

1. Applicability and Exemptions

a. Well Exemptions

Comment: One commenter suggests adding ''appraisal wells'' as a third subcategory of well to be exempt from the REC requirements, and defines these wells as those drilled in an area where the reservoir has not been classified for that area as containing proved reserves of natural gas. According to the commenter, adding this definition and exemption better reflects the universe of wells for which a gas flow line system

[18] For the same reason, we need not address the comment claiming that CAA section 111(f)(3) requires that the EPA consult with state governors before amending CAA section 111(b) listing.

[19] While not required to do so, we have included the Background Information Document for the listing rule in the docket for this rule. We note that those documents shed no additional light on the scope of the listing beyond our interpretation of the listing preamble described in the proposed rule.

will not be available. The commenter adds that it also avoids a potential problem where a shale play appraisal well system is effectively compelled to install a flow line system before the wells are determined to be economically viable, in order to assure compliance with 40 CFR part 60, subpart OOOO.

Response: The EPA recognizes that a flow line at the well pad is a necessary precondition to capture flowback gas for emissions control so that the REC process has an outlet for the captured gas. However, the EPA does not agree that appraisal wells need to be exempt. Appraisal wells are drilled and then logged to assess productivity. If well logs indicate that the well is productive, then fracturing will be performed, and the cost to fracture, complete and produce the well, including installing a flow line, will be incurred. If the well logs indicate the well is not economically productive, then no fracturing occurs and the NSPS does not apply. The EPA, therefore, believes it is reasonable to require appraisal wells that are hydraulically fractured to comply with Subcategory 3 rule requirements.

b. Threshold for Low Pressure (Low Volume) Gas Wells and Wells with Low or No VOC Emissions

Comment: One commenter expresses support for the REC requirements and urges the EPA to limit the number of well completions exempted from the requirements as much as possible. Several commenters contend that not all well completions can be conducted successfully under a requirement to flow back to the flow line, since the imposition of the flow line backpressure may reduce the flowback gas velocity sufficiently so that it is not energetic enough to clean up the well of liquid and sand. One commenter recommends that any well whose reservoir pressure (measured at the wellhead immediately after perforation) is less than 4 times (in absolute units) the line pressure measured at the flow meter, would be exempt from any requirement to flow to sales during the flowback period. According to the commenter, variability in reservoir and line pressures across the United States makes setting a specific pressure threshold difficult.

Response: The EPA has established three subcategories of wells in response to public comments, as described above. One of those categories comprises non-wildcat and non-delineation low pressure gas wells. Low pressure gas wells are defined as wells with reservoir pressure and vertical well depth such that 0.445 times static reservoir pressure (in pounds per square inch absolute (psia)) minus 0.038 times the vertical well depth (in feet) minus 67.578 psia is less than the flow line pressure at the sales meter. Thus, wells above this pressure differential must implement REC, while wells below this pressure differential are required to route emissions to a completion combustion device.

The EPA solicited comment in the proposed rule on situations where REC may be infeasible and criteria and thresholds for distinguishing well completion operations in those situations from others where REC is feasible. As noted above, several commenters highlighted the technical issues that prevent an operator from implementing an REC on a low pressure gas well, which is the inability to attain a gas velocity sufficient to clean up the well when flowing against the flow line backpressure. Based on this information, the EPA agrees that a pressure differential threshold is reasonable and addresses the technical limitations of low pressure gas wells to produce to the flow line during completion.

As noted above, a commenter recommended specific approaches to developing a pressure threshold, including specifying that any well whose reservoir pressure is less than 4 times (in absolute units) the line pressure measured at the flow meter would be exempt from any requirement to flow to the flow line during the flowback period. This recommendation is based on a flowing bottom hole to reservoir pressure ratio of 1:2 and a line pressure to flowing bottom hole pressure of 1:2. The EPA concurs with the commenter that flowing bottom hole pressure can be represented as half of the reservoir pressure for this rule. The EPA disagrees with the commenter that line pressure can be represented as half of the flowing bottom hole pressure for this rule since this pressure relationship can be more accurately determined using the Turner equation for liquids unloading from a well paired with models relating fluid velocity to pressure drop. Therefore, the EPA has modeled a worst-case pressure drop factor between the line pressure and flowing bottom hole pressure and has established a pressure threshold using this factor and the 1:2 factor for flowing bottom hole pressure to reservoir pressure. The result of this modeling is the equation discussed above in the definition of low pressure gas wells.

As discussed in the proposal preamble, potential control options are REC with combustion or a completion combustion device alone. Because REC may not always be technically feasible for wells that fall below the pressure threshold, the EPA has determined that the BSER for reducing VOC emissions for this subcategory of wells is a completion combustion control device. However, the EPA encourages the use of REC with combustion should that be a viable option for any well within this subcategory. Therefore, in the final rule, for non-wildcat and non-delineation wells with a pressure drop below the differential described above, the EPA requires the use of either a completion combustion device or REC with combustion to control gas not suitable for entering the flow line.

Comment: Several commenters address parameters for defining which well completions would be subject to REC requirements. Commenters request that the EPA exempt wells with low VOC concentrations from the REC requirements and not issue the proposed standards before reconsidering the emissions estimates. One commenter suggests that the EPA exempt hydraulically fractured natural gas horizontal wells with *de minimis* VOC concentrations because the cost per ton of VOC reductions is extremely high for these wells and the emissions from the combustion of the produced gas could worsen ozone formation in the area. Commenters also provide, as examples, some wells with low or no VOC as support for exempting wells with a low VOC content or for exempting certain classes of wells such as coal bed methane. Several commenters contend that coal bed methane wells have low VOC, while several other commenters contend that coal bed methane wells have no VOC. Some commenters provide examples of coal bed methane wells with low VOC or no VOC, and one commenter provides an example of a shale gas well with no VOC.

Response: The EPA acknowledges that the VOC concentration in natural gas can vary across wells and reservoir types such as coal bed methane (CBM), shale and tight sands. However, the information provided in the comment is insufficient for the EPA to determine that any specific class of wells, or wells with VOC concentration below a specific threshold, would not be cost-effective to regulate, as the commenters recommend. For example, several commenters contend that CBM wells have low or no emissions. In response to comments received, the EPA assessed the VOC content of CBM wells, including a review of the gas composition data presented in the gas

composition memo[20] available in the docket and in an article[21] by the United States Geological Survey. The VOC concentrations among CBM wells will vary and are not always low. The limited CBM data submitted by the commenter, while suggesting low-VOC concentrations at some CBM wells, is not to the contrary. Accordingly, we conclude that it would be inappropriate to provide a categorical exclusion for such wells.

We also have determined that providing a low-VOC concentration exclusion would be inappropriate, both because the submitted data do not support such an exclusion (they do not demonstrate that such circumstances are frequent) and because of implementation concerns. Specifically, even if such a VOC concentration threshold described above can be determined, to ensure compliance with the rule, an operator would have to determine with certainty before production, whether a particular well was going to be above or below the threshold in order to mobilize the necessary capture equipment and secure a flow line, etc. This would require the operator to determine the reservoir composition, *e.g.,* the gas composition prior to separation, in advance of the well completion (*i.e.,* the determination of whether the well would be subject to the NSPS would have to be performed before the information on which to base such a determination would be available). Although nearby existing wells could potentially provide some indication of the general VOC content of the gas from the future well in question, there would be no assurance of certainty. In addition, the operator would need to certify that the reservoir sample is going to stay consistent and representative of the gas stream throughout the full completion process through multiple gas composition analyses.

Taking into account the variability in VOC concentrations across reservoir types, the EPA's cost analysis illustrates that these requirements are cost-effective, especially when taking into account the gas savings. Compliance with a VOC concentration threshold-based rule for well completions could actually increase the burden to the operator by requiring numerous compositional analyses to demonstrate compliance with the rule.

c. Definition of Gas Well

Comment: Several commenters mentioned that the proposed definition of ''gas well'' was unclear due to the term ''principal production'' used in describing what the well produces. One commenter requests that the definition of gas well be modified to be each respective state's definition of gas well. The commenter states that, by doing this, the EPA would eliminate any confusion associated with having to apply different criteria (NSPS versus state regulations) for how to define a well-type in assessing the applicability of the rule.

Response: In response to comments requesting further clarity in the definition, the EPA has revised the definition. The proposed definition was ''*Gas well* means an onshore well, the principal production of which at the mouth of the well is gas.'' In the final rule, in response to the comments we received, the EPA has revised the definition to exclude the phrase ''at the mouth of the well is gas.'' Based on this revision, the definition for the final rule is ''*Gas well or natural gas well* means an onshore well drilled principally for production of natural gas.''

EPA's intent in setting standards for completion of hydraulically fractured gas wells is to require reduced emissions completions for wells where infrastructure is generally present to get recovered natural gas to market. Our understanding is that owners and operators plan their operations to extract a target product and evaluate whether the appropriate infrastructure is available to ensure their product has a viable path to market before completing a well. We expect that the final rule will result in control of hydraulically fractured gas wells drilled in the four formation types generally accepted as gas-producing formations: (1) High-permeability gas, (2) shale gas, (3) other tight reservoir rock or (4) coal seam. We believe that the wording changes made to the definition of ''gas well'' clarify the intent so that implementing agencies and industry will not be burdened with complex applicability determinations.

With respect to using State gas well definitions, basing applicability on different definitions from State to State could introduce inconsistencies that are counter to the goal of nationwide regulation. We believe the NSPS, being a national rule, should contain a single definition applicable nationwide. However, states may choose to use a definition more expansive than our definition for their programs.

Comment: One commenter states that, based on the EPA's discussion in Section 4 of the Technical Support Document (TSD), it appears the EPA's intent is to require reduced emissions completions only for natural gas wells. The commenter supports that the EPA applied reduced emissions completions only to natural gas wellhead facilities and excluded oil wellhead facilities and other types of gas wells which have little or no VOC emissions. The commenter states that, as shown on page 4–13 on Table 4.4, *Nationwide Baseline Emissions from Uncontrolled Oil and Gas Well Completions and Recompletions,* of the TSD, there are only 134 tpy of VOC emissions from oil well completions and recompletions for the entire United States, which is not worth regulating.

One commenter recommends the following revision: ''Gas well means a well, the principal production of which at the mouth of the well is [add: hydrocarbon gas, not CO_2] * * * Well means an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected.'' One commenter proposes the following revision: ''Gas well means a well, [DELETE the principal production of which at the mouth of the well is gas] completed for production of natural gas from one or more gas zones or reservoirs. Such wells contain no completions for the production of crude oil.'' The commenter also proposes the following revision: ''Gas well means a well [STRIKETHROUGH: the principal production of which at the mouth of the well is gas.] [ADD TEXT: completed for production of natural gas from one or more gas zones or reservoirs. Such wells contain no completions for the production of crude oil.]''

Response: Although some wells drilled in crude oil formations may produce associated gas along with the oil, without a gas infrastructure present, the EPA does not have sufficient data on VOC emissions during completion of hydraulically fractured oil wells to set standards for these operations at this time.[22] As a result, the final rule will not affect drilling of oil wells.

[20] Memorandum from Brown, Heather, EC/R Inc., to Moore, Bruce, EPA/OAQPS/SPPD, *Composition of Natural Gas for use in the Oil and Natural Gas Sector Rulemaking,* July 28, 2011. Docket ID No. EPA–HQ–OAR–2010–0505–0084.

[21] Rice, Dudley, *Composition and Origins of Coalbed Gas,* U.S. Geological Survey, Denver, Colorado.

[22] In the proposed rule, we briefly assessed well completions of hydraulically fractured oil wells and did not believe that either REC or a completion combustion device is cost effective for reducing VOC emissions from such operations. We note, however, that this brief assessment of oil wells in the proposed rule was based on limited information at the time and that more information is needed for us to fully evaluate the VOC emissions and control options for these operations.

d. Availability of Infrastructure to Convey Gas to Market

Comment: Various commenters have asserted that, in some cases, REC cannot be performed on some wells because there is no gathering line available to convey gas produced during the completion flowback period.

Response: As explained above, it is our understanding that owners and operators plan their operations to extract a target product and evaluate whether the appropriate infrastructure access is available to ensure their product has a viable path to market before completing a well. However, in the standards for gas well affected facilities, the provisions of 40 CFR 60.5375(a)(1) through (4) apply to all fractured gas wells that are not exploratory wells, delineation wells or low pressure wells. These standards require that the well completion flowback be conducted using a combination of collection (*i.e.,* REC), combustion and venting, depending on the characteristics of the flowback material and feasibility of routing the gas to a collection system to be conveyed to market. Section 60.5375(a)(3) provides:

''You must capture and direct flowback emissions that cannot be directed to the flow line to a completion combustion device * * *''.

We believe that owners and operators of gas wells subject to 40 CFR 60.5375(a) that require REC for a portion of the flowback period will exercise due diligence in coordinating the completion event with availability of a flow line to convey captured gas to market. However, there may be cases in which, for some reason, the well is completed and flowback occurs without suitable flow line available. In those isolated cases, we believe 40 CFR 60.5375(a)(3) provides for gas not being collected and instead combusted or vented pursuant to that section.

e. Fracturing of Wells Using Nitrogen and Carbon Dioxide

Comment: One commenter suggested that wells that are fractured using nitrogen or CO_2 should be exempt from the NSPS but did not provide supporting rationale. Other commenters expressed concern that inert gases such as nitrogen are not flammable, making compliance with the combustion provisions of the NSPS impossible.

Response: We believe that the standards for well completions adequately address the concerns expressed by operators using nitrogen and/or CO_2 for fracturing. We provided in the proposed rule, and further clarified in the final rule, that these standards require that the well completion flowback be conducted using a combination of collection (*i.e.,* REC), combustion and venting, depending on the characteristics (including flammability) of the flowback material and feasibility of routing the gas to a collection system to be conveyed to market. Both the proposed and final rules express our intent to require REC only where there is salable quality gas to the gather line. See 76 FR 52800 and 40 CFR 60.5375(a)(2) of the final rule.

Section 60.5375(a)(3) in the final rule provides: ''you must capture and direct flowback emissions that cannot be directed to the flow line to a completion combustion device, except in conditions that may result in a fire hazard or explosion, or where high heat emissions from a completion combustion device may negatively impact tundra, permafrost or waterways. Completion combustion devices must be equipped with a reliable continuous ignition source over the duration of flowback.''

Under this provision, operators who employ energized fracturing using inert gases and cannot route the flowback gas to a collection system because of poor gas quality must direct the flowback to a completion combustion device with a continuous ignition source. Although part of the flowback gases directed to the combustion device would not be flammable, the ignition source will ignite the flammable portion of the flowback, including VOC. Therefore, the presence of inert gases such as nitrogen and CO_2 in the flowback gas has no bearing on the VOC reduction we expect to achieve through the NSPS or on compliance with provisions of the final rule.

2. Rule Should Not Prescribe Equipment

Comment: Several commenters suggest revising 40 CFR 60.5375(a)(2) equipment requirements to be less prescriptive, especially in cases where use of specified or all listed equipment may not be necessary, and to provide flexibility to include newly developing technology. Other commenters assert that language in 40 CFR 60.5375(a)(1) and (2) stating that source owners or operators should ''minimize the emissions associated with venting of hydrocarbon fluids and gas'' and that ''[a]ll salable gas must be routed to the gas gathering line as soon as practicable'' is vague and recommended a requirement that facility owners follow a Best Management Practice (BMP) plan that the EPA could develop, informed by the Natural Gas STAR program.

Response: The EPA agrees that prescribing specific equipment to accomplish a reduced emissions completion is not necessary and has revised the rule language to not prescribe specific equipment. The operational standards provided in the NSPS allow the operator flexibility to perform the REC using equipment and practices best determined by the operator. As a result, we believe that a BMP plan developed by the EPA would not provide a higher degree of emissions control and could hinder innovation.

3. Availability of Equipment and Trained Personnel

Comment: Commenters state that the supply of REC equipment and personnel is insufficient to meet the requirements of the proposed rule, applied nationally. According to commenters, proper surface equipment, collection infrastructure and qualified personnel are not readily available; they assert that this equipment is fairly specialized, the shops licensed to make it are limited and some of the components require a long lead time. For these reasons, commenters indicate that compliance by the issuance date of the rule would be unrealistic and that the EPA should provide a longer compliance period.

Response: Based on information submitted by commenters, we have reason to believe that, currently, there is already significant demand for REC equipment. For example, Colorado, Wyoming, the City of Fort Worth, Texas, and the City of Southlake, Texas, require REC under certain conditions. Additionally, public comments, reports to the EPA's Natural Gas STAR Program and press statements from companies indicate that some producers implement REC voluntarily, based upon economic and environmental objectives. If REC were to be immediately required of all well completions, NSPS would place significant additional demands on REC equipment supply and experienced personnel.

As the near-term supply of REC equipment and trained personnel will be insufficient to meet the new national demand for equipment and labor, immediate compliance with the REC requirements could be impossible, potentially causing producers to delay well completions until appropriate equipment and labor are available. Resulting delays in well completions while awaiting equipment availability could cause a decrease in the nationwide natural gas supply and would drive up the cost of completions doing REC. It is not the EPA's intent to set in motion a series of events through this rule that has the potential to affect

the natural gas supply and increased cost of REC would undermine our BSER analysis. Accordingly, it is important that the EPA consider the availability of REC equipment and personnel in its BSER analysis.

Through EPA and industry events and collaborative studies, the EPA has interacted with operating companies that have extensive experience implementing REC. In particular, the EPA developed a detailed study [23] on REC in collaboration with service providers. Based on this experience, the EPA has gained extensive information on this technology. Despite these efforts, the EPA is not aware of any quantitative information on the current and future supply of workers trained in REC techniques.

The EPA received data on the current and future supply of REC equipment. According to one commenter, about 300 REC units are in use today, with the ability to process about 4,000 wells per year, and 1,300 additional units would be required to perform 20,000 REC per year. About 1,600 units performing 20,000 REC/year implies a REC productivity rate of about 12.5 REC/year/unit, or roughly each unit performing one REC per month, on average.

The NSPS proposal estimated 9,300 REC performed for new natural gas well completions and 12,200 REC performed for existing natural gas well completions following refracturing would be required, in addition to those already required by state regulations. In the analysis supporting the final rule, the EPA revised estimates show 11,403 hydraulically fractured and 1,417 hydraulically refractured natural gas well completions will be performed in a representative year, which includes completions in states which currently have REC requirements. The revised estimate also reflects a change in the refracture frequency of existing wells from 10 percent to 1 percent based on information provided by commenters. Of the total hydraulically fractured well completions, the EPA estimates that about 11,300 REC will be required nationally on the basis of the final rule's provisions for wildcat (exploratory) and delineation wells, flowback gas pressure and natural gas well completions conducted on existing gas wells that are subsequently fractured or refractured. This estimate excludes REC required by state regulations.

Assuming a REC unit performs 12.5 REC/year, as is asserted by the commenter, about 900 units would be required. This implies a current shortfall of about 600 units, based upon the numbers and assumptions provided by the commenter. The commenter states that industry can deliver about 50 units per quarter, after a 1-year build-up period. Given that the EPA does not have an alternative estimate of the number of REC units industry can produce per year, we adopt the estimate of 50 units per quarter for this analysis, although the EPA disagrees with the assumption that a 1-year build-up period is required. Using the commenter's assumptions, it would take about 4.25 years to meet demand. This scenario is depicted in Scenario A in Table 6 below, assuming compliance is initiated at the beginning of the second quarter, 2012, and the industry begins delivering 50 units per quarter roughly 1 year after the compliance date.

Surveys conducted by one commenter indicate that nine companies expect to perform more REC than the current stock is capable of. Given this growing demand, it is reasonable to assume industry can deliver units during the build-up period of the first year of implementation, which would reduce the time required to meet full demand another year to a total of about 3.25 years (Scenario B).

The EPA also assessed whether the productivity of equipment in use could be higher than the 12.5 REC/year/unit derived from the comment, and the potential impact of such increase on the equipment supply. The EPA estimated that flowback periods will typically be 3 to 10 days with 7 being a reasonable average. Therefore, because it is likely that a REC unit could be moved to another well site and be in operation in less than 20 to 27 days, it is reasonable to conclude that each REC unit can perform more than 12.5 REC/year.

If the utilization rate of REC units is increased gradually from performing 12.5 REC/year/unit to 14 to 18 REC/year/unit, the time required to build the supply of REC units decreases (Scenarios C–G). As Table 6 shows, each 1 REC/year/unit increase reduces the build-up time by about 1 quarter. As is shown in Scenarios C and G, increasing the utilization rate of REC to 14 to 18 REC/unit/year with industry supplying new units beginning with the compliance date would provide between 1.75 and 2.75 years for full build-out of the REC unit supply by the beginning of calendar year 2015.

TABLE 6—REC UNIT SUPPLY ANALYSIS

Scenario	A	B	C	D	E	F	G
RECs Required	11,301	11,301	11,301	11,301	11,301	11,301	11,301
RECs/year/unit	12.5	12.5	14.0	15.0	16.0	17.0	18.0
Units Needed	904	904	807	753	706	665	628
Stock in Existence (assume industry can build 50 units/quarter; assuming industry starts with 300 units); compliance begins approximately at the end of the second quarter, 2012.							
2012 (Q1)	300	300	300	300	300	300	300
2012 (Q2)	300	300	300	300	300	300	300
2012 (Q3)	300	350	350	350	350	350	350
2012 (Q4)	300	400	400	400	400	400	400
2013 (Q1)	300	450	450	450	450	450	450
2013 (Q2)	300	500	500	500	500	500	500
2013 (Q3)	350	550	550	550	550	550	550
2013 (Q4)	400	600	600	600	600	600	600
2014 (Q1)	450	650	650	650	650	650	650
2014 (Q2)	500	700	700	700	700	700	.....
2014 (Q3)	550	750	750	750	750	.....	.....
2014 (Q4)	600	800	800	800	.....	.....	.....
2015 (Q1)	650	850	850	.....	.....	.....	.....

[23] Available at: *http://www.epa.gov/gasstar/documents/reduced_emissions_completions.pdf.*

TABLE 6—REC UNIT SUPPLY ANALYSIS—Continued

Scenario	A	B	C	D	E	F	G
2015 (Q2)	700	900	.....	.....	.....	.....	.....
2015 (Q3)	750	950	.....	.....	.....	.....	.....
2015 (Q4)	800	.....	.....	.....	.....	.....	.....
2016 (Q1)	850	.....	.....	.....	.....	.....	.....
2016 (Q2)	900	.....	.....	.....	.....	.....	.....
2014 (Q3)	950	.....	.....	.....	.....	.....	.....

Because of uncertainties in the supply of equipment and labor over the near-term, and based on our analysis described above, the EPA concludes that REC may not always be available through 2014. Therefore, during this period, the BSER for well completions is to combust completion emissions. REC with combustion as an alternative to combustion is permitted by the rule so that facilities that are able to obtain REC equipment may still capture completion emissions using a REC. After January 1, 2015, capturing completion emissions using a REC will be considered BSER. This period will permit the companies producing REC units to increase production to levels sufficient to meet new demand. In addition, because more REC will be performed as a result of this rule, the EPA believes that producers will take advantage of scale economies and use REC units at a higher rate of productivity than the rate implied by comments received.

The EPA believes that the NSPS, as finalized, will minimize the risks of producers slowing well completion-related activities to obtain appropriate equipment and labor. While there would be NO_X formation as a result from the additional combustion of completion emissions during the phase-in period, VOC emissions reductions would be maintained because completion emissions will be either combusted or captured. The EPA maintains that the benefit of the VOC reduction during the phase-in period far outweighs the secondary impact of NO_X formation during pit flaring. The phase-in period would also minimize the possibility that the cost of REC equipment and labor increases over the near-term, enabling producers to better plan efficient use of existing and new capital and labor, and providing additional time for innovation in REC technologies and/or practices. We believe this period provides ample time for this technology to be built and available for use.

At the same time, for wells undergoing recompletions during the period prior to January 1, 2015, the terms of 40 CFR 60.5365(h), which specify that ''[a] gas well facility that conducts a well completion operation following hydraulic refracturing is not an affected facility, provided that the requirements of section 60.5375 are met,'' may provide an additional incentive for producers to use REC units prior to January 1, 2015, if they can obtain appropriate equipment and labor. Also, considering the requirement in some states that any source subject to a federal NSPS must get a state minor source air permit, we anticipate that the desire to avoid even short term delays caused by state permitting, as well as the associated costs, will serve as an incentive for the use of REC during well completion operation following hydraulic refracturing, including operations prior to January 1, 2015. Furthermore, as January 1, 2015, approaches it is highly likely that providers of REC equipment and related services will be increasing availability of such equipment and services in ways that benefit supply and price. For these reasons, the EPA anticipates that during the period between promulgation and January 1, 2015, between 1,000 and 1,500 wells will be recompleted with REC units, notwithstanding the requirements of 40 CFR 60.5375(a) and the combustion option they provide.

4. Cost and Emissions Calculations

Comment: Some commenters request the EPA to fully explain or reconsider the 10-percent rate of refracturing of wells.

Response: In response to comment, the EPA has reevaluated the assumption that, on average, each fractured gas well is re-fractured every 10 years, which equates to approximately 10 percent of fractured gas wells being re-fractured each year, based on drilling and re-fracture records from an industry representative. Based on its review of the comment, including references noted in the comment and other information available to the agency, the EPA concluded that it had overestimated the re-fracturing frequency. The information reviewed by the EPA, which, altogether, represent over 20,000 gas wells over multiple years, some as far back as 2000, indicate that the annual recompletion frequency can be as low as 0.1 percent and as high as 0.8 percent. Based on this information, the EPA has revised its estimate of re-fracturing frequency from 10 percent to 1 percent of fractured gas wells per year. The EPA rounded the figures provided by the companies to reflect the uncertainty in the data.

5. Definition of Affected Facility

Comment: Several commenters assert that a well completion is different from a well workover and should be better defined in the rule.

Response: Based on the comments received, the EPA acknowledges that the term ''workover'' is a general term that may have a number of different meanings. Based on the various definitions of the term provided by the commenters, we realize that workover may be interpreted to include routine maintenance activities that we did not intend to cover under the rule and which result in no increase in emissions. Therefore, in the final rule we have revised the definition of ''well completion operation'' to exclude the term ''workover'' and, instead, include the phrase ''with hydraulic fracturing.''

C. Major Comments Concerning Pneumatic Controllers

1. Definition of Affected Facility

Comment: Some commenters request that the EPA consider excluding or exempting emergency and/or safety system devices (such as a pilot operated pressure relief valve). According to one commenter, safety system devices typically do not emit gas unless there is an emergency, have a near-zero VOC-level static state and, if regulated, could be replaced by substandard, cheaper technology of spring operated valves which would create much more leakage of gas into the environment.

With regard to emergency situations, another commenter argues that the proposed standards that apply to pneumatic controller affected facilities (40 CFR 60.5390(b)) could inhibit safe plant operation during an emergency because they require that each pneumatic controller located at a natural gas processing plant have zero

natural gas emissions. According to the commenter, a gas-powered controller is a reliable alternative for safe plant operation during emergencies, and the commenter suggests that the final rule include an exception to allow gas plants to use natural gas-driven pneumatic controllers for emergency plant shutdown and subsequent startup.

With regard to high-bleed pneumatic controllers, several commenters request that the EPA further explain when the use of high-bleed pneumatic controllers is allowed and provide specific examples of exemptions. The commenters suggest exemptions that address situations such as those where the natural gas includes impurities that could increase the likelihood of fouling a low-bleed pneumatic controller, such as paraffin or salts; where weather conditions could degrade pneumatic controller performance; during emergency conditions; where flow is not sufficient for low-bleed pneumatic controllers; where electricity is not available; and where engineering judgment recommends their use to maintain safety, reliability or efficiency. Several commenters request that the EPA provide additional information about how to demonstrate that the use of high-bleed pneumatic controllers is predicated, as stated in proposed 40 CFR 60.5390(a). The commenters suggest that this exemption is very vague, will allow for excessive emissions and is not enforceable.

Response: The EPA included in the proposed rule exemptions from the NSPS to allow the use of a controller with a natural gas bleed rate greater than 6 scfh due to functional needs. These exemptions include, but are not limited to, response time, safety and actuation of valves. These functional exemptions to the requirement address the commenters' concerns of safety, emergency and otherwise non-routine situations that require the use of a controller with a natural gas bleed rate greater than 6 scfh. In response to comments regarding vagueness of the proposed exemption, the EPA revised this exemption provision in the final rule. We believe the provision in the final rule clarifies the scope of this exemption.

Comment: Several commenters express concerns with the proposed rule's treatment of various types of pneumatic devices and controllers. One commenter requests that the EPA clarify in 40 CFR part 60, subpart OOOO that intermittent bleed pneumatic devices are not affected sources. Another commenter asserts that continuous low-bleed controllers that replace existing continuous low-bleed controllers should not be ''affected facilities.'' According to this commenter, some designed high-bleed devices may be isolated from the gas pressure with a valve and operated manually on an intermittent basis. The commenter wants clarification in the rule that will allow an operator to use a high-bleed device if it is operated in a manner that keeps its emission levels less than 6 scfh.

One commenter requests that the EPA clarify in the final rule that the distribution segment and self-contained devices that release gas to a downstream pipeline instead of to the atmosphere are exempt. Another commenter argues that no-bleed pneumatic devices have zero emissions and, thus, should not be included in the proposed rule.

One commenter discusses the use of solar-powered controllers, fuel-cell powered controllers and mechanically-controlled devices in remote locations as an alternative to natural gas where grid electricity is not available. This commenter also recommends that the EPA set a zero emissions standard based upon no-bleed devices wherever electricity (either from a grid or from field power sources) is available within a reasonable distance from the facility and suggests that the EPA could establish an exemption to no-bleed devices where low-bleed devices are necessary because no-bleed devices cannot be feasibly installed.

Another commenter states the definition of ''pneumatic controller'' is unclear and should be revised.

Response: In the final rule, the EPA has revised the definition of ''affected facility'' for pneumatic controllers in the production segment [24] to address a number of the comments described above. Specifically, for pneumatic controllers at gas processing plants where the standard is zero bleed rate, we have defined the affected facility as a continuous bleed natural gas-driven pneumatic controller. For other areas in the production segment (*i.e.,* excluding gas processing plants), where the standard is a bleed rate of 6 scfh or less, we have defined the affected facility as a continuous bleed natural gas-driven pneumatic controller operating at a bleed rate greater than 6 scfh. By defining the pneumatic controllers affected facilities to be continuous bleed and gas-driven, we clarify that the NSPS does not apply to intermittent bleed devices, no-bleed pneumatic devices (by design), self-contained devices and devices driven by instrument air. The revised definitions also exclude from the NSPS coverage owners and operators who are already using (including replacement) pneumatic controllers that meet the applicable standards, thus, relieving them from the cost and other burdens related to compliance.

Regarding the comments related to solar-powered controllers, fuel-cell powered controllers, mechanically-controlled devices and no-bleed devices wherever electricity is available, we considered these types of devices in the BSER analysis, as discussed in the TSD. Any such controller system would require a backup system (consisting of at least an electrical generator) to operate the controllers when the primary system was inoperable. When considering the cost of the backup system, these options were not cost-effective. We, therefore, do not believe that they are BSER for reducing VOC emissions from pneumatic controllers where grid electricity is not available. We also decline to set a zero emission standard ''wherever electricity * * * is available within a reasonable distance,'' as a commenter suggests. We have no information, nor has the commenter provided any, on how to determine the suggested ''reasonable distance.''

Comment: Several commenters request an exemption for all affected facilities handling gas with less than 10-percent VOC content by weight. Some commenters offer suggestions for such exemption, such as requiring recordkeeping of the gas VOC content in order for a facility to maintain the exemption.

One commenter believes that the EPA should delete the pneumatic controller requirements because most of the gas emitted is methane, and there is little VOC emission reduction benefit. Another commenter suggests limiting applicability to pneumatic controllers at natural gas processing plants or upstream of processing that exceeds a defined VOC threshold.

Several commenters opine that pneumatic device definitions and applicability should be based on VOC emissions, not natural gas as a surrogate. Commenters assert that the 6 scfh high-bleed/low-bleed threshold value is unsupported, that natural gas VOC content varies widely and that, in most cases, unconventionally produced CBM and shale gas have little, if any, measurable VOC.

Several commenters also wanted to exclude pneumatic controllers driven by a specified percentage of VOC.

[24] The NSPS does not cover pneumatic controllers in the distribution segment. The EPA did not address those controllers in the proposed rule. Although the EPA had proposed standards for pneumatic controllers in the transmission and storage segment, for reasons explained in section IX.C.2 of this preamble, the EPA did not include such standards in the final rule.

According to the commenters, regulating the use of compressed air or ''instrument air'' or other gas having little or no VOC would impose a significant burden on the industry without any added benefit.

Response: The EPA disagrees with the comment that the pneumatic controller standards must be based on VOC emissions instead of natural gas bleed rate as a surrogate for VOC emissions rate. Natural gas is being used as a surrogate for VOC given the proportional relationship between them. When a natural gas stream is emitted to the atmosphere, VOC in the gas also reaches the atmosphere since it is a component of the natural gas stream. The natural gas emissions occur without any physical separation, chemical separation or chemical reaction process of the chemical species within the natural gas; therefore, the proportion of VOC in natural gas is not altered during the course of being emitted to the atmosphere, and natural gas is an appropriate surrogate for VOC. As an example, when the natural gas emissions change, the VOC emissions change proportionately. In addition, measuring the VOC content of a pneumatic controller's bleed gas adds cost burden to companies and, to the EPA's knowledge, vendors/manufacturers do not report the VOC emissions from a pneumatic controller primarily because the VOC emissions would depend on the gas composition at the site the pneumatic controller is located.

In the preamble to the proposed rule, the EPA set forth its BSER analysis for pneumatic controllers. In the TSD, the EPA has provided cost-effectiveness calculations for the proposed pneumatic device emission limits. The commenters do not dispute the EPA's analysis. Rather, the commenters ask that the EPA establish a VOC threshold. However, the commenters have not provided information on how an appropriate threshold can be established. One commenter suggests a threshold of 10-percent VOC content by weight, but has not provided supporting information justifying this threshold. However, for the reasons stated in the response to comment in section IX.C.2 of this preamble, the EPA has decided not to cover in this final rule the pneumatic controllers in the transmission and storage segment. With respect to those controllers we are not taking final action at this time.

Comment: One commenter suggested that the EPA provide a phase-in period to allow manufacturers and companies time to designate which controllers qualify as low-bleed. This commenter further notes that bleed rates are not specified for pneumatic controllers or are inconsistently represented without distinguishing between the continuous bleed stream and the actuation stream rates within the gas consumption specifications.

Response: In the proposed rule, for pneumatic controllers [25] in the production segment other than gas processing plants, the EPA proposed a performance standard of a natural gas bleed rate of 6 scfh to reflect the use of a low-bleed controller, which we had determined to be the BSER for reducing VOC emissions from pneumatic controllers in the production segment.[26] Owners and operators would demonstrate compliance based on information in the manufacturers' specifications for the pneumatic controllers, which we had believed would provide either the bleed rate or relevant information for such determination. Upon further investigation, in light of the comments, we conclude that such information is not always included in current manufacturers' specifications. We anticipate that manufacturers who currently do not provide the relevant information for determining bleed rate would adjust to this need and begin testing their products and provide the necessary information on the products' specifications. Based on public comments and other available information, the EPA believes that an adjustment period is needed, during which owners and operators could face increased cost and, in some instances, difficulty in obtaining necessary supplies due to the limited number of currently available controllers with adequate documentation for determining bleed rate. In light of the above, we conclude that a low-bleed controller is not the BSER for pneumatic controller affected facilities in the production segment (excluding gas processing plants) during this first year. As explained in the proposed rule, we are not aware of any add-on controls that are or can be used to reduce VOC emissions from gas driven pneumatic devices. 76 FR 52760. One commenter broadly suggests that we consider flares, combustion devices and vapor recovery, but provides no supporting information. In light of the above, we conclude that there is no BSER for pneumatic controller affected sources in the production segment (excluding gas processing plants) during the ''adjustment period'' mentioned above.

In determining the length of the adjustment period, the EPA evaluated relevant comments and available information, including information from promulgation and implementation of 40 CFR part 98, subpart W of the Greenhouse Gas Reporting rule. Subpart W requires operators to conduct a complete inventory and report to EPA the number of low- and high-bleed pneumatic devices, as those terms are defined in subpart W, over a 3-year period (*i.e.,* ⅓ of their devices every year over a 3-year period) starting January 2011. We believe that efforts are well under way for manufacturers to provide necessary information to help facilities subject to subpart W determine the pneumatic controllers' bleed rates and comply with the reporting rule requirements, ⅓ of which must be reported by September 2012 and another third by September 2013 and the entire inventory by September 2014. In light of the above, we do not believe that owners and operators would face the difficulty described above beyond the first year after this NSPS becomes effective. After this first year of ''adjustment period,'' we believe owners and operators should have no problem securing controllers with relevant documentation for determining bleed rate. Therefore, beginning the second year, the BSER remains the low-bleed controllers, as proposed.

For the reasons stated above, the final rule contains no standards for pneumatic controller affected facilities in the production segment during the first year after this rule becomes effective, but, thereafter, requires that all new and modified affected facilities to meet a VOC limit of 6 scfh natural gas bleed rate to reflect the use of a low-bleed controller. The need for adequate manufacturers' specifications is not an issue for pneumatic controllers at natural gas processing plants. For pneumatic controller affected facilities at natural gas processing plants, we had proposed a zero VOC emission limit, the compliance of which can be demonstrated by the use of a non-gas-driven controller system. As noted by commenters, most natural gas processing plants already use non-gas-driven technology such as instrument air systems for safety and operational reasons. While one cannot distinguish

[25] For the reasons explained earlier in this section, we have changed the definitions of the pneumatic controller affected facility in the production segment other than gas processing plants to be a continuous bleed natural gas driven pneumatic controller with a natural gas bleed rate greater than 6 scfh. This change does not affect the proposed BSER analysis and VOC limit, which apply to high-bleed pneumatic controllers in the final rule.

[26] For reasons explained in section IX.C.2 of this preamble, unrelated to the comment at issue, the final rule does not include standards for pneumatic controllers in the transmission and storage segment.

gas-driven pneumatic controllers of different bleed-rates without information from manufacturers, a non-gas-driven controller can be easily identified by visual inspection. Therefore, no change is made since proposal to the standards for pneumatic controller affected facilities at gas processing plants.

In response to comments that units already in stock at the time of proposal cannot be used, the EPA clarifies that pneumatic controllers that were already in stock or ordered prior to August 23, 2011, are considered existing sources and, therefore, their installation is not subject to the pneumatic controllers NSPS in this final rule.

2. Controllers in the Transmission and Storage Segment

Comment: Several commenters requested the EPA reevaluate requirements for pneumatic controller/devices in the natural gas transmission segment of the industry. The commenters argue that the proposed rule's applicability is too broad and would result in an undue recordkeeping and permitting burden.

Several commenters recommend that 40 CFR part 60, subpart OOOO should limit pneumatic controller applicability to upstream processes. Some commenters suggest that, for natural gas transmission and storage, either pneumatic controllers should be completely excluded or subpart OOOO should limit applicability to equipment located at ''conventional'' facilities, *e.g.,* within the fence line at a compressor stations. One commenter recommends limiting the emission limit requirement to controllers at natural gas processing plants or locations upstream from gas processing that exceed a defined VOC threshold. The commenter suggests that this exclusion would reduce administrative costs in two ways: Mandatory recordkeeping and reporting would be removed and the documentation required to explain why excluded controllers would no longer be necessary would be removed. Another commenter suggests that the EPA state in the final rule that NSPS/NESHAP applicability alone should not trigger minor source permitting requirements.

Response: The EPA agrees that cost and other compliance burdens are important considerations in a rulemaking. In fact, the EPA believes that such consideration is particularly important here given that coverage of the transmission sector would result in a significant number of sources and owner and operators that are not subject to the current standards. Specifically, were we to finalize standards, we estimate that we would end up covering an additional 67 sources. We estimate VOC emissions from these units to be 0.1 tpy per facility or about 6 tpy nationwide for new sources, which is well below the level emitted by other affected facilities in this sector.

While our analysis suggests that this is an important set of sources to regulate, given the large number of sources, and the relatively low level of VOC emitted from these sources, we have concluded that additional evaluation of these compliance and burden issues is appropriate prior to taking final action on pneumatic controllers in the transmission and storage segment. For this reason, the requirements for pneumatic controllers in the final rule only apply to production through processing segments. Our current data indicate that the VOC content of the natural gas used for pneumatic controllers in the transmission and storage segment is low, while higher VOC content natural gas is used in the segments we are regulating. Also, for the reasons explained in the previous response to comment, no VOC threshold will be included in this regulation.

3. Cost and Emissions Calculations

Comment: One commenter asserts that the EPA's estimate of 14,000 new and replaced controllers in a given year is grossly underestimated. By the commenter's data and calculations, approximately 750,000 controllers in Texas alone may need to be replaced (unless an exemption is granted) once a well becomes subject to the new rule.

Response: The commenter incorrectly claims that the EPA's estimate of the number of pneumatic controllers installed in a given year is 14,000. In Section 5.3.2 of the TSD, the EPA explains its methodology for estimating the number of pneumatic controllers in both gas/oil production and gas transmission and storage. Table 5–3 of the TSD gives a breakdown of snap-acting versus bleed controllers and shows the total number of controllers to be 33,673. The commenter did not provide data to support its claim that there are 750,000 pneumatic controllers in Texas, or that all of them have bleed rates higher than the proposed NSPS requirements such that any future replacement would require the use of a different model (*i.e.,* low bleed or no bleed, depending on its location) of controller. In any event, the EPA has analyzed and determined that such replacement is cost-effective. One explanation for the commenter's high estimate may be a misunderstanding of the applicability of the final rule. We remind the commenter that the final rule does not apply to existing sources, unless the existing source is replaced, modified or reconstructed after August 23, 2011.

D. Major Comments Concerning Compressors

1. Compressors in the Transmission and Storage Segment

Comment: One commenter stated that the agency should exempt reciprocating and centrifugal compressors in the transmission and storage sector located after the point of custody transfer, because there is low-VOC content in natural gas from that sector. Another commenter urged the EPA to revise 40 CFR 60.5365 to exclude centrifugal compressors not associated with the Crude Oil and Natural Gas Production, Transmission, and Distribution sector. One commenter noted that some large natural gas customers (who are not in the Crude Oil and Natural Gas Production, Transmission, and Distribution sector) have natural gas centrifugal compressors that are used to increase the pressure of natural gas for use in an industrial process, or to compress natural gas used as the fuel in compressed natural gas vehicles.

One commenter argued further that even without regard to fundamental flaws stated in the five factors or methods, there still would be only trivial and inconsequential VOC reductions relative to the national VOC inventory. The commenter observed that achieving VOC reductions of 1 percent of the national anthropogenic VOC inventory would require over 21,000 regulations at 6.9 tpy, and that the EPA's estimated annual VOC reductions for compressors was similarly inconsequential. Nor, said the commenter, had the EPA adequately considered administrative burdens associated with reporting, recordkeeping and permitting. The commenter said the trivial, incremental emissions reductions that would result from the rule failed to justify the associated compliance costs and that the final rule should exclude transmission and storage sources. Another commenter expressly called on the EPA to reanalyze VOC emissions reductions and to reassess whether the rule would be cost effective. Also taking issue with supportive data, another commenter said the EPA should suspend rulemaking and expand its fact-finding to include a statistically significant sampling of affected sources. One commenter suggested that the EPA exclude centrifugal compressor facilities that compress natural gas that is less

than 10 percent, weight basis, VOC. The commenter stated that compression of gas that does not contain VOC should not be subject to standards for VOC. The commenter believes this is consistent with equipment leak rules which do not regulate components that are not in VOC service.

Response: The EPA agrees with the commenter that natural gas in the transmission and storage segment has low-VOC content. The EPA notes that cost and other compliance burdens are important considerations in a rulemaking. We estimated the VOC emissions reductions from these units located in the transmission and storage segment to be 14.1 tpy for reciprocating compressors and 6.6 tpy for centrifugal compressors, which is well below the level emitted by other affected facilities in this segment. The EPA has not fully considered compliance burden for reciprocating and centrifugal compressors in the transmission and storage segment and is, therefore, not ready to take final action with respect to these sources. While our analysis suggests that this is an important set of sources to regulate, given the number of sources, and the relatively low level of VOC emitted from these sources, we have concluded that additional evaluation of these compliance and burden issues is appropriate prior to taking final action on reciprocating and centrifugal compressors in the transmission and storage segment.

Also, no VOC threshold will be included in this regulation given the arbitrary nature of defining one using available data. We believe this revision also addresses centrifugal compressors not associated with the Crude Oil and Natural Gas Production, Transmission, and Distribution sector.

2. Dry Seals Versus Wet Seals

Comment: Several commenters address the issue of whether the EPA should permit the use of a system other than dry seal to control emissions from centrifugal compressors. Some commenters provide information on situations where dry seal systems for centrifugal compressors are not technically feasible, such as where gas composition is inadequate, in some processing plants that already have a capture system in place, and in retrofits of some existing compressors due to housing design or operational requirements. Commenters opine that the rule should allow compliance using either system, depending upon particular circumstances, and should not preclude use of a wet seal-equipped compressor with controls capable of meeting a 95-percent VOC control efficiency or routing captured seal-oil gas to a fuel gas, recycling or other processing system. According to another commenter, it would not be feasible to capture gas that escapes from a centrifugal compressor and route it back to a low-pressure fuel stream for combustion as fuel gas; although such a process would capture a minimal amount of VOC emissions, the high cost of equipment to recapture the emissions would make the method described cost-prohibitive.

Commenters generally concurred that a 95-percent reduction in emissions was achievable through installing a capture system on a wet seal compressor. In addition, commenters disagreed with the EPA's cost estimates and concluded that a wet seal capture system is cost effective.

Response: In the preamble to the proposed rule, the EPA proposed that a dry seal system is the BSER for centrifugal compressors, but solicited comments on situations where the use of a dry seal is infeasible or otherwise inappropriate and wet seal is the only option. 76 FR 52762. As noted above, several commenters provided information on situations where dry seals are not technically feasible. Therefore, the EPA has concluded that dry seal is not the BSER for all new and modified centrifugal compressors. Instead, the EPA separately evaluates the control options for wet seal compressors. The EPA has identified one control option through its review of available information, including comments and other information obtained since proposal. The option is to route captured seal-oil gas to the compressor suction, fuel gas system or flare, all of which can achieve 95-percent control efficiency.

Based on the discrepancy between commenters' and the EPA's cost data, the EPA re-evaluated its cost information for this control option. The EPA cost estimates in the proposed rule assumed the use of a new flare to combust the captured seal oil gas, and, based on commenter information, the EPA is revising this assumption since a flare or other combustion source is expected to be available in gas processing facilities. From reviewing comments received, the EPA is aware that the captured gas is not always routed to a flare but in many cases is routed back to the compressor suction or fuel system. Given this information, the EPA has re-evaluated the costs for the centrifugal compressor wet seal capture system and determined a system of this type, in which the seal oil degassing vents are routed to fuel gas, compressor suction or an existing flare would cost $22,000. The estimated cost includes an intermediate pressure degassing drum, new piping, gas demister/filter and a pressure regulator for the fuel line. With this cost, the estimated VOC control cost effectiveness is $161/ton of VOC for the processing segment. If savings are included, the cost effectiveness for VOC control is −$2,408/ton of VOC.

In light of the above, we have determined that the control option described above is the BSER for wet seal compressors. Accordingly, the final NSPS would require that wet seal compressors reduce emission by 95 percent. For dry seal compressors, the only emission control option we have identified is the use of dry seal. Accordingly, there is no requirement in the final rule for dry seal compressors, and dry seal compressors are not affected facilities under the NSPS.

3. New Source Definition

Comment: Several commenters oppose the proposal in 40 CFR 60.5365(b) and (c) that a reciprocating compressor be considered as ''commenced construction'' on the date of installation at a facility. Commenters argue that the EPA was ''arbitrary and capricious'' in proposing to apply the concept of ''commenced construction'' in the NSPS context to a relocated compressor, because the agency had no ''reasoned explanation'' for making the change and that applying the concept of ''commenced construction'' to a relocated compressor is contrary to the plain language of the CAA.

Response: The EPA traditionally defines the term ''commence construction,'' as it applies to an equipment, to mean the time an owner or operator has entered into a contractual obligation to acquire the equipment. This is reflected in the definition of ''commenced'' in the General Provisions at 40 CFR 60.2, as well as in the relevant NSPS (see, *e.g.,* 40 CFR 60.4230(a) of subpart JJJJ). We, therefore, agree with the commenters that our proposed definition of ''commence construction'' in 40 CFR 60.5365(b) and 40 CFR 60.5365(c) as the time of installation is a deviation from our traditional view. Upon reviewing the comments and re-evaluating the proposed definition, we conclude that there is no discernible difference between the compressors at issue and other equipment subject to NSPS that would make such deviation necessary or appropriate in this case. We have, therefore, removed these specific definitions of ''commence construction'' in 40 CFR 60.5365(b) and 40 CFR 60.5365(c) in the final rule.

The NSPS also does not apply to relocated compressors. As provided in the NSPS General Provisions at 40 CFR 60.14(e)(6), relocation of an existing facility is not modification.

E. Major Comments Concerning Storage Vessels

1. Applicability Threshold Metric

Comment: Numerous commenters objected to the EPA's proposed use of liquid throughput to determine which storage vessels should be subject to the standards, asserting that the high variability in volatility of stored liquids and other parameters affecting emissions makes throughput a poor indicator of VOC emissions. The commenters indicate that, as a result, basing applicability on throughput would bring many storage vessels with low VOC emissions (some less than 1 tpy) under the standard and the required emission controls would not be cost-effective. Some commenters point out that certain storage vessels with high emissions might not be subject to the standards based on throughput.

Response: In its BSER analysis for storage vessels, the EPA estimated the VOC emissions for storage vessels with various levels of throughputs to determine the cost effectiveness of control. In that analysis, the EPA estimated that storage vessels with throughput rates of 1 barrel per day (bpd) of condensate or 20 bpd of crude oil are equivalent to VOC emissions of 6 tpy and determined that control is cost effective for these storage vessels. The EPA agrees with the comments that throughput is not a good indicator of VOC emissions and, therefore, not appropriate for determining the standards' applicability. However, the EPA has received no comment contesting the EPA's conclusion that regulating storage vessels emitting 6 tpy or more of VOC is cost effective and appropriate (the basis of our proposed throughput limit). Accordingly, in the final rule, the storage vessels NSPS applies to those emitting 6 tpy or more of VOC. This change from proposal would ensure that controls will be required only on those storage vessels where they can be applied cost effectively. This approach also allows for broader coverage across all types of storage vessels, regardless of the fluid that is stored or where the storage vessel may be located. The final rule reflects this change and has established a VOC emissions threshold of 6 tpy for storage vessels to require control. Based on our revised cost analysis, we determined that storage vessels with VOC emissions equal to or greater than 6 tpy or greater were cost effective to control at $3,400/ton of VOC. The final rule requires each facility to determine its own emission factor and calculate the estimated emissions from each storage vessel.

2. Definition of Affected Facility

Comment: Numerous commenters commented on the definition of storage vessel in 40 CFR part 60, subpart OOOO, calling for greater clarity and consistency and requesting that certain activities or equipment be included or excluded from the definition.

Response: The EPA agrees with the commenters who assert that a more specific and consistent definition of a storage vessel is needed. The revised definition more clearly focuses on identifying which units are considered storage vessels under this subpart and which units are not and describes a storage vessel using terminology similar to that used in 40 CFR part 63, subpart HH. We believe it is important to be somewhat consistent in terminology because the NSPS and NESHAP both apply to the oil and natural production segment where these tanks are primarily located. We also removed the emissions threshold from the definition and, instead, based the standard in 40 CFR 60.5395 on the VOC emission rate of the storage vessel. In response to comments requesting clarification on whether mobile units are considered storage vessels, we have set a minimum amount of time (180 consecutive days) that the storage vessel must be stationed at the same site before it is subject to 40 CFR part 60, subpart OOOO. Our reasoning for setting this minimum amount of time is discussed in the response to comment immediately below. Additionally, we have not excluded wastewater storage vessels, as the NSPS requires control for all storage vessels emitting at least 6 tpy of VOC. Further, some wastewater tanks containing significant amounts of organic compounds could exceed VOC emissions of 6 tpy. Finally, the revised definition includes specific exemptions for process vessels and pressure vessels to clarify that these units are not considered storage vessels. Since the applicability of subpart OOOO, as finalized, is not based on throughput, we believe it is not necessary to specify which types of stored materials are regulated and which are not, as suggested by commenters. If a stored material is emitting at least 6 tpy of VOC, then the storage vessel will need to reduce its VOC emissions by 95 percent.

Comment: Some commenters assert that the EPA should limit applicability to storage vessels that are stationary and should clarify the meaning of ''stationary'' to include or exclude certain types of storage vessels.

Additionally, the EPA received comments requesting that the stationary aspect of the ''storage vessel'' definition should be consistent with other rules, while acknowledging the particular scenarios unique to the oil and gas production segment. The commenter notes that the stationary aspect of a storage vessel is typically addressed by the EPA in terms of whether it is reasonably portable, although the EPA sometimes addresses portability based on the size of the vessel. The commenter states that another criterion specified by the EPA in several regulations is that ''vessels permanently attached to motor vehicles'' are not storage vessels, and the EPA has issued a determination that this exemption extends to storage vessels ''equipped with a permanently attached wheel assembly and a truck hitch'' (U.S. Environmental Protection Agency, letter from George T. Czerniak to Ken Comey, Flint Hills Resources L.P., September 2, 2004). According to the commenter, this renders most so-called frac tanks, Baker tanks, International Organization for Standardization tanks, etc., exempt from the storage vessel provisions when this form of definition is used. However, the commenter recognizes that such storage vessels sometimes become effectively ''stationary'' in oil and gas production operations and suggests that storage vessels should be deemed stationary if they remain at a given site for more than 180 consecutive days, consistent with the period of time allowed under 40 CFR 60.14(g) to achieve compliance after a modification. The commenter notes that this 180-day period is reasonable given that the definition of non-road engines in 40 CFR 89.2 allows a period of 12 consecutive months.

The commenter also points out that cost effectiveness of the proposed control measures has been evaluated under the assumption that storage vessels remain in place for the useful life of the control equipment, and, thus, the control costs are amortized over a period of years. Since the cost per ton of emission reductions would be much higher if the controls were applied to a storage vessel that is only on site temporarily, the commenter believes that a cost-effectiveness analysis for permanent storage vessels would not be valid for temporary storage vessels, and, thus, the control requirements for permanent storage vessels are not justified for temporary storage vessels. The commenter provides recommended language for the definition of ''storage vessel'' that addresses this and other

concerns. Another commenter similarly states that costly control requirements are not appropriate for temporary storage vessels (on site less than 180 days).

Response: Based on the commenter's suggestion, the EPA has revised the definition of storage vessel to clarify that a storage vessel is subject to 40 CFR part 60, subpart OOOO if it remains on a given site for more than 180 consecutive days.

In general, we agree with the commenter's discussion about the EPA's past practices related to storage vessels. In particular, we agree that the inherent differences between ''mobile'' or temporary storage vessels in this source category and other categories indicate that they should be regulated differently. As mentioned in the previous response, there are many storage vessels in this source category that travel from site to site, so we did not feel it was appropriate to exclude all of these mobile storage vessels from control requirements. Many temporary storage vessels in this source category are typically bringing in material such as fracking fluid to well sites and can stay at a well site for up to several months in order to receive flowback. These storage vessels are considered to be an essential part of the drilling and production operation, more akin to how permanent storage vessels are utilized in the refining and organic chemical manufacturing sectors, rather than to conventional tank trucks that are typically excluded in other EPA rules. Therefore, we believe that 180 days is an appropriate period of time to establish a temporary tank as being subject to 40 CFR part 60, subpart OOOO, and, therefore, potentially required to install controls.

3. References to MACT Standards

Comment: The EPA received comment asserting that the outcome of its best demonstrated technology (BDT) analysis for proposed 40 CFR part 60, subpart OOOO was calculated to achieve the same level of control as 40 CFR part 63, subpart HH—undermining the BDT determination and effectively (and unlawfully) extending subpart HH major source MACT requirements to area source storage vessels.

As a result, the commenter asserts that the EPA's analysis precludes other potentially relevant regulatory alternatives—such as marginally less effective controls that might be applied to a broader range of storage vessels. The commenter states that the EPA's failure to consider other control techniques and other levels of control efficiency that might be achieved by its preferred techniques is arbitrary and capricious.

Response: The commenter incorrectly asserts that the EPA's NSPS for storage vessels was designed to achieve the same level of control as MACT in 40 CFR part 63, subpart HH. In *Portland Cement Assoc.* v. *EPA,* 665 F.3d 177 (D.C. Cir. 2011), the United States Court of Appeals for the District of Columbia Circuit rejected an argument that the EPA adopted NESHAP PM standards for NSPS, noting that the EPA arrived at the same limit for both NESHAP and NSPS using two different mechanisms. Similarly, in this case, although both the NESHAP and the NSPS require 95-percent control, the EPA established the two standards based on separate mechanisms. The EPA established the MACT standard in 1998 pursuant to section 112(d)(2) and (3) of the CAA. In contrast, the EPA established the NSPS based on BSER analysis under CAA section 111. The BSER analysis for storage vessels consists of the same steps as those for other affected sources evaluated in the proposed NSPS. Specifically, the EPA evaluated available information to identify VOC control options. The EPA then assessed various aspects of the control options, including their VOC reduction potentials, their cost effectiveness and secondary air impacts. The commenter did not claim that any part of the EPA's BSER analysis above was inaccurate or inappropriate. For the reasons stated above, the commenter's assertion is without support.

The commenter also claims that the EPA only analyzed two controls and, therefore, failed to consider other ''potentially relevant regulatory alternatives.'' However, the commenter did not identify any other control option for the EPA's consideration. The commenter simply suggests that the EPA should consider some less effective controls, which the commenter claims would have led to greater coverage. Without more information, it is unclear whether a less effective control than that we have identified would, in fact, qualify as BSER for controlling VOC emissions from storage vessels or would have resulted in coverage of additional storage vessels.

Comment: Two commenters state that the cost of the performance tests, monitoring, recordkeeping, etc., that are required through cross-references to 40 CFR part 63, subpart HH were not adequately considered by the EPA in the cost-effectiveness determination for 40 CFR part 60, subpart OOOO, which applies to dispersed locations that do not have electricity or automation, and have limited remote transmitting unit space.

Response: The EPA does not take into account monitoring, recordkeeping and reporting costs in determining cost effectiveness of controls and in evaluating BSER. Based on this and other comments detailed in the response to comments for this final rulemaking, the EPA removed from 40 CFR part 60, subpart OOOO the citations to the requirements for performance tests, monitoring, recordkeeping, etc., in 40 CFR part 63, subpart HH and incorporated these subpart HH requirements into subpart OOOO. During the incorporation process, we made minor revisions to the subpart HH requirements, as appropriate for subpart OOOO. For example, we removed references to glycol dehydrators and paragraphs listed as ''reserved.''

4. Availability of Control Equipment

Comment: Some commenters believe that there will be a shortage of control equipment available to meet the proposed storage vessel requirements, and recommend revisions to the compliance deadline for storage vessels based on a variety of considerations, including the availability of control devices, lead time needed for manufacturer testing of their combustors to be compliant with the NSPS and time needed to install the compliant devices.

Response: We agree that it will likely take some time beyond the promulgation date of the NSPS for combustor manufacturers to have control devices constructed, tested, documented and available for operators to install in efforts to comply with the storage vessel requirements of the NSPS. Under the final rule, operators are not required to conduct individual performance tests on combustors installed in the field if the combustor manufacturer tests and documents for the owner or operator that the model achieves a control efficiency of 95.0 percent. The time required for testing and documentation is often longer than for a single model when manufacturers provide multiple models for varying applications based on capacity. We believe this testing and documentation program would require an ''adjustment period'' for manufacturers to be ready to supply the operators with the correct equipment they need.

We considered whether it would be feasible for on-site testing to mitigate the shortage of manufacturer tested combustors. Although owners and operators can test their individual combustors in the field to determine combustor efficiency, such emissions testing is expensive and can only be

performed if testing consultants are available to conduct the testing. We believe that immediately after the effective date of the NSPS there will be a shortage of available testing consultants concurrent with the shortage of pre-tested combustor models. As a result, we conclude that on-site testing would not sufficiently mitigate the difficulty of owners and operators complying with the NSPS.

We evaluated whether controls other than combustors would be available during this adjustment period. Although vapor recovery units (VRU) can provide 95.0-percent control for storage vessels and are one means of meeting the storage vessel standards in the NSPS, VRU cannot be used in every situation. For example, storage vessels located remotely where there is no available electrical service may not be able to be controlled using VRU. In addition, storage vessels with low concentration emission streams or fluctuating emissions may not be amenable to control by VRU. Further, VRU installations would also require on-site testing, and owners and operators would be hampered by the same consultant shortage situation described above for combustors.

In light of the above, we conclude that there is no BSER for storage vessel affected sources during the first year after promulgation, which we believe is appropriate for the adjustment period mentioned above. At the end of this adjustment period, we believe owners and operators should have no problem securing control devices that are manufacturer-tested and have appropriate documentation for determining control efficiency. Accordingly, the final rule provides for a 1-year phase-in beginning October 15, 2012 before the 95.0-percent control requirement is effective.

With regard to providing time for operators to establish the need for controls and install them where called for, the EPA agrees that some lag time may be needed after initial start-up for the owner or operator to determine the long-term production level of a well and to procure the appropriate control equipment. The EPA evaluated the approach taken in the Wyoming rules for new sources, which allows from 30 to 90 days for a source to achieve compliance, depending on the area of the state. Wyoming allows only 30 days in ozone nonattainment areas, 60 days for concentrated development areas or 90 days elsewhere in the state. The EPA believes that 60 days is a reasonable period for controlling new storage vessels at wells sites with no wells already in production.

However, for replacement storage vessels or additional storage vessels at well sites with one or more wells already in production, we believe the operator already should have information on liquid composition and throughput. This information would allow estimation of VOC emissions to determine applicability of control requirements and for acquisition and installation of a control device concurrent with the replacement or additional storage vessel being installed. In the final rule, for storage vessels constructed, modified or reconstructed at well sites with no well already in production, we have provided for a 30-day period for throughput to stabilize and for the operator to estimate VOC emissions to determine whether a control device will be required. If VOC emissions are estimated to be at least 6 tpy, the operator is provided an additional 30 days for the control device to become operational. We believe that the Wyoming experience illustrates that this will be sufficient time to size and obtain suitable controls.

F. Major Comments Concerning Notification, Recordkeeping and Reporting Requirements

1. 30-Day Notification and Annual Reports

Comment: Multiple commenters state that the 30-day advance notification of well completions under 40 CFR 60.5420(a) should be removed from the final rule. Commenters assert that this and notification requirements in 40 CFR 60.7(a) are unduly burdensome and costly, not adequately explained, not related to verifying compliance with the proposed rule and could conflict with the need to protect proprietary business information.

Multiple commenters also note that industry's estimate of annual completions is several times higher than the EPA's estimate of 20,000 completions following fracturing and completions following refracturing annually. The commenters believe that these requirements will likely overwhelm both regulated entities and state regulators alike. Commenters offer suggestions, including requiring annual certifications or maintaining records available for inspection, reducing the proposed advance notification requirement to 5–10 days and considering notification programs such as those in Texas and Wyoming. Different commenters support or oppose requiring a 30-day advance notice with follow-up notification of 1–2 days before an impending completion.

Several commenters suggest that the EPA should coordinate with state and local agencies to eliminate duplicative recordkeeping and reporting requirements, and that records of interest other than those submitted to the respective Oil and Gas Commissions should only be required to be retained and available upon inspection, similar to other permit requirements.

Several commenters do not agree that an annual report under 40 CFR 60.7(a)(1), 40 CFR 60.7(a)(3) and 40 CFR 60.7(a)(4) adds any value for verifying compliance and the EPA should remove this requirement from the final rule. The commenters add that the best method for compliance is for an owner or operator to maintain necessary records and to have the records available for review during an on-site inspection. One commenter suggests the annual report should include for each type of affected facility (1) the total number of affected facilities at the site; (2) the number of facilities that became affected facilities during the reporting period; (3) the number of exempted facilities; and (4) the number of affected facilities with a non-compliance situation during the reporting period. One commenter suggests that it would be easier for facilities to submit an annual report on a set date each year, and multiple affected facilities could be included in a single report. Two commenters propose that all notifications for each year be delivered in a single annual report corresponding to the reporting period in which the affected facilities become subject to the rule. One commenter suggests that operators should be required to keep records at the nearest manned office, but reports should only be required if they are requested by the EPA.

The commenters recommend, where feasible, streamlining the final notification and reporting requirements to eliminate unduly burdensome notification and reporting requirements.

Response: The EPA agrees that certain notification, recordkeeping and reporting requirements in the General Provisions are unduly burdensome for the new affected facilities in this NSPS. For that reason, well completions, pneumatic controllers and storage vessels will be exempt from the notifications required by 40 CFR 60.7(a)(1), (3) and (4). We agree that notifications of well completions should be as streamlined as possible to remove excess burden from both the owners and operators and regulatory agencies, as well. As a result, we have removed the 30-day advance notification requirement and instead are requiring an advance notice via email to the EPA or delegated

authority no later than 2 days prior to completion.

To avoid duplicative and potentially conflicting notification requirements and to relieve notification burden from owners and operators, we have added a provision in the final rule that, if an owner or operator has met the state requirements for advance notification of well completions, then the owner and operator are considered to have met the advance notification requirement for gas well completions under the NSPS.

We also believe that the operator should be provided flexibility to use new technology to document compliance that would result in less paperwork burden on the part of the operators themselves and on regulators. To lessen the reporting burden, the final recordkeeping and reporting requirements for well completions also provide for a streamlining option that owners and operators may choose in lieu of the standard annual reporting requirements. The standard annual report must include copies of all well completion records for each gas well affected facility for which a completion operation was performed during the reporting period. The alternative, streamlined annual report for gas well affected facilities requires submission of a list, with identifying information of all affected gas wells completed, electronic or hard copy photographs documenting REC in progress for each well for which REC was required and the self-certification required in the standard annual report. The operator retains a digital image of each REC in progress. The image must include a digital date stamp and geographic coordinates stamp to help link the photograph with the specific well completion operation. Operators are not required to take advantage of the optional recordkeeping and reporting approach, as some may choose to follow the standard reporting requirements. Under either approach, the report must include a record of all deviations during the reporting period in cases where well completion operations with hydraulic fracturing were not performed in compliance with the requirements for each gas well affected facility.

Comment: One commenter requested that the EPA add a self-certification requirement to the annual report similar to that used in the title V program. The commenter recommended that the final rule require the annual report to include a statement signed by a senior official of the facility attesting to the truth, accuracy and completeness of the report.

The commenter also requested that the EPA require that the annual reports be submitted electronically to facilitate making the reports publicly available. The commenter suggested using social media outlets, smart phone applications and other electronic means to make the annual reports readily available.

Response: The EPA agrees that self-certification is an important mechanism for assuring the public that the information submitted by each facility is accurate. In addition, the title V program has successfully employed self-certification since its inception. Therefore, we are requiring self-certification, based on requirements in the title V program, in the final rule.

While we agree that having annual reports readily available to the public is a desirable goal, we did not identify any reporting programs or electronic databases that may be used for this purpose without significant modification. Therefore, we are not requiring annual reports to be submitted electronically, but we will continue to evaluate this option in the future.

2. Duplicative Recordkeeping and Reporting Requirements

Comment: Multiple commenters state that the notification, recordkeeping, monitoring and annual reporting requirements in the proposed NSPS are duplicative and extremely burdensome for operators and for state regulators with limited resources. The commenters make both general and specific recommendations to revise the reporting requirements in the final rule to eliminate duplication and reduce burden or better inform the public and regulatory agencies about deviations. Some commenters would eliminate all or some reports, while others argue that reporting is an essential compliance and enforcement mechanism and that additional information should be provided. Some commenters feel that an owner or operator should maintain necessary records and have them available for review.

Commenters want the compliance assurance requirements to be appropriate for the oil and gas industry and commensurate to the environmental benefit that will be generated. For example, some commenters feel that the EPA should exempt small sources regulated under this rule from the notification and reporting requirements.

Response: We have considered these and other related comments presented in the response to comments regarding the proposed reporting requirements. The EPA agrees that certain notification, recordkeeping and reporting requirements are unduly burdensome and believes it is important to minimize the burden of reporting requirements. However, as noted in several comments, states and other enforcement entities are confronting limited resources and visiting sites is not always practical and is particularly challenging in this industry. For that reason, the EPA believes notifications and reporting requirements are vital to ensure compliance with our regulations. Therefore, the EPA has evaluated the proposed notification, recordkeeping and reporting requirements in an effort to streamline the requirements to reduce burden on both industry and enforcement at the same time, assuring compliance with the NSPS. In the final rule, the EPA has removed or otherwise revised proposed reporting requirements that the EPA believes to be duplicative or unnecessary, including, but not limited to, those raised in the comments. These changes will streamline the reporting process and reduce the reporting burden on sources, including small sources. For example, as previously discussed, well completions and continuous bleed natural gas controllers are exempt from the notifications required by 40 CFR 60.7(a)(1), 40 CFR 60.7(a)(3) and 40 CFR 60.7(a)(4). In addition, the EPA has revised the rule language such that only continuous bleed natural gas controllers installed, modified or replaced during the reporting period are reported in the annual report. In addition, the EPA has revised the 30-day individual notification requirement for well completions, as discussed above.

3. Electronic Reporting of Emissions Data

Comment: Commenters suggest a variety of ways in which electronic reporting could be structured and implemented, with attention to coordination with various CAA requirements and programs to avoid duplicative and potentially burdensome requirements. Several commenters support electronic reporting of emissions data from all sources to be stored on existing EPA databases, such as the Electronic Greenhouse Gas Reporting Tool (e-GGRT) or added to the Toxics Release Inventory, and available to the public. These commenters believe that communities must have access to air quality information in order to protect public health. One commenter objects to the use of e-GGRT as a reporting mechanism in place of a state's own tracking system, where the state has enforcement responsibility for the emissions date and tracking of sources subject to the proposed rule. The commenters also suggested a variety of ways in which electronic

reporting could be structured and implemented.

Several commenters oppose the implementation of electronic reporting at this time and are concerned that an ERT will result in numerous complications and undue additional burden. The commenters point out that the EPA's experience with e-GGRT indicates that considerable time and resources are needed to develop and implement efficient systems and to ensure that electronic reporting enhances efficiency rather than incurring additional burden on affected sources. The commenters state that a potential disadvantage associated with an ERT is that new and/or alternative test methods would not be in the system. In addition, the commenters believe that an ERT could be complicated and burdensome for smaller companies that lack environmental personnel or experience with electronic reporting under other rules. The commenters suggest that if the EPA delegates authority to states to implement and enforce the standards, some states may be unable or unwilling to accept electronic reports. The commenters urge the EPA to consider other more simplified options to report only the needed information.

Response: While the EPA supports and encourages electronic reporting, after further consideration of all the comments, we do not believe the e-GGRT is the appropriate mechanism for electronic reporting under this rule, as recommended by some commenters. The e-GGRT is not designed to accept all of the types of information required to be reported under the final rule, and significant modification of the system would be required to make it operational for this rule.

However, the final rule does include reporting of performance test data via the ERT. The EPA must have performance test data to conduct effective reviews of CAA sections 112 and 129 standards, as well as for many other purposes, including compliance determinations, emission factor development and annual emission rate determinations. In conducting these required 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 performance test data 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, as a step to increase the ease and efficiency of data submittal and improve data accessibility, the EPA is requiring the electronic submittal of select performance test data. Data entry will be through an electronic emissions test report structure called the ERT. The ERT will generate an electronic report which will be submitted using the CEDRI. The submitted report is submitted through the EPA's CDX network for storage in the WebFIRE database making submittal of data very straightforward and easy. Webfire is the EPA's online emissions factor repository, retrieval and development tool. The WebFIRE database is open to the public and contains the EPA's recommended emissions factors for criteria and HAP for industrial and non-industrial processes. Emissions data collected from the oil and natural gas sector, as well as many other sectors, will be used to update our emissions factors. The data will also be used by the EPA's rule writers to make better informed decisions and learn more detailed information about emissions from sources. The electronic reporting requirement in this rule (and other NSPS/NESHAP rules) is only for test methods that are supported by the ERT.

One major advantage of submitting performance test data through the ERT is a standardized method to compile and store much of the documentation required to be reported by this rule. Another advantage is that the ERT clearly states what testing information would be 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.

State, local and tribal agencies can also benefit from a more streamlined and accurate review of electronic data submitted to them. The ERT allows for an electronic review process rather than a manual data assessment making review and evaluation of the data and calculations easier and more efficient. Finally, another benefit of submitting data to WebFIRE electronically is that these data will greatly improve the overall quality of the existing and new emission 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 will be able to ensure that emission factors, when updated, represent the most current range of operational practices.

X. Summary of Significant NESHAP Comments and Responses

For purposes of this document, the text within the comment summaries was provided by the commenter(s) and represents their opinion(s), regardless of whether the summary specifically indicates that the statement is from a commenter(s) (*e.g.,* ''The commenter states'' or ''The commenters assert''). The comment summaries do not represent the EPA's opinion unless the response to the comment specifically agrees with all or a portion of the comment.

A. Major Comments Concerning Previously Unregulated Sources

Comment: One commenter asserts that, although the EPA's original MACT analysis covered all storage vessels, it issued a MACT standard at that time that applied to storage vessels with the PFE only. The commenter states that, while they support the EPA's effort to correct this omission, the initial analysis for the tanks that the agency did regulate in 1999 was seriously flawed, and the proposed rule provides no justification for continuing to rely on a 13-year old analysis to propose a MACT standard for an entirely new universe of storage vessel sources. Thus, according to the commenter, the EPA's failure to properly calculate the MACT floor in setting the MACT standard for storage vessels violates CAA section 112(d)(2) and (3).

The commenter states that, because this method has been found to be unlawful and substantially more data are available at this time, the EPA must now recalculate the MACT floor and MACT limits for tanks with the PFE. *Cement Kiln Recycling Coalition, et. al.* v. *U.S. EPA,* 255 F.3d 855, 863–64 (D.C. Cir. 2001). The commenter asserts that, in addition and partly as a consequence of its unlawful reliance on the prior standards, the EPA also has failed to fulfill the beyond-the-floor requirement of CAA section 112(d)(2). The commenter opines that, absent an up-to-date analysis based on current emission controls, an appropriate beyond-the-floor determination cannot be made.

Two commenters do not believe that the dataset used is representative of currently operating small glycol dehydrators. One commenter believes that the EPA has not satisfied section 112(d)(2) and (3) of the CAA and that the EPA needs to calculate the MACT

limit based on the best-performing sources that currently exist.

One commenter recommends that the EPA base its MACT floor analyses on emissions data from a representative population of small dehydrators that characterize the population of affected sources within the category or subcategory. The commenter reports that more current data sources may be available, such as dehydrator emissions data reported to state agencies in annual emission reports or in permit applications.

One commenter opines that the EPA's proposal misses the opportunity and fails to fulfill the agency's responsibility to properly calculate the MACT for all sources in this sector based on current, reliable and representative emission test data. The commenter believes that, by relying on an incomplete and outdated dataset to set MACT floors and limits, the EPA has ignored data demonstrating trends in practices, processes and technologies and the resulting improved performance that CAA section 112(d) mandates. The commenter asserts that the EPA ignores the potential HAP emissions that the control devices themselves emit by failing to collect such emissions data from facilities that have installed control devices. The commenter argues that the EPA must collect the appropriate emission test data needed in order to recalculate and set a proper MACT for glycol dehydrators, storage vessels and equipment leaks.

One commenter states that section 112 of the CAA requires the EPA to set a NESHAP for each category or subcategory of ''major sources'' of HAP emissions. 42 U.S.C. 7412(d)(1). The commenter asserts that the EPA must set CAA section 112(d) emission standards based on ''maximum achievable control technology'' or ''MACT.'' The commenter states that the EPA largely bases its MACT proposal for small glycol dehydrators on emissions data collected from the industry during the development of the original MACT standards. 76 FR 52768. The commenter contends that the data were collected prior to 1997 and did not adequately represent the emissions profile at that time, and do not reflect the significant changes in the industry and other technological developments that have occurred during the past 13 years. According to the commenter, the EPA has not provided a reasoned explanation of how those data could be representative of currently operating glycol dehydrators and associated emission reductions, and how proposals based on those data can currently meet the MACT requirements for new and existing sources. The commenter states that the dehydrator technology performance in 1997 was not accurately reflected in the legacy EPA dataset and has advanced significantly in the past 13 years. Consequently, according to the commenter, the EPA has not provided a reasoned explanation of how those data could be representative of currently operating glycol dehydrators and associated emission reductions, and how proposals based on those data can currently meet the MACT requirements for new and existing sources. The commenter believes this is critical because the 2005 NEI data reveal that improvements in the environmental performance of the category have progressed such that there are far more units in service with lower emissions than reflected in the 1997 data.

One commenter states that the EPA did not collect recent data regarding emissions of HAP, including BTEX, from small glycol dehydrators in either source sector in support of this rulemaking. Instead, according to the commenter, the EPA appears to have relied on data collected in the prior MACT rulemaking, going back to 1998 or prior. The commenter believes that the EPA's analysis is flawed and questionable because it simply relies on the best-performing sources that existed a decade ago and fails to identify the best controlled sources today. The commenter contends that it is unlikely that these MACT standards reflect either the current best controlled similar source emissions or the average of the top 12 percent of the currently best controlled sources. The commenter states that, while the EPA appropriately proposes to set a MACT limit for these sources for the first time, the EPA's use of out-dated data fails to demonstrate that its proposed limit is stringent enough in light of significant developments in emission control technologies and practices that have occurred since 1998.

Response: One commenter argues that EPA has not satisfied sections 112(d)(2) and (3) of the CAA, because the MACT standards set in the 1999 rule have not been re-calculated using current data. To the extent the commenter is arguing that CAA section 112(d)(6) requires that the EPA recalculate the MACT standards set in 1999, based on current emissions test data, the commenter is incorrect. In *NRDC* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008), the District of Columbia Circuit held that it ''[did] not think the words 'review, and revise as necessary' can be construed reasonably as imposing any such obligation'' to re-calculate the MACT floors. *NRDC* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008).

Moreover, in this action, we did not re-open the MACT standards in 40 CFR part 63, subpart HH for large glycol dehydrators, storage vessels with the PFE and equipment leaks for or in 40 CFR part 63, subpart HHH for large glycol dehydrators. As such, the commenter's request that we re-calculate those standards based on current emissions data is outside the scope of this rulemaking. We did, however, conduct a CAA section 112(d)(6) technology review for subpart HH and determined that there have been no developments in practices, processes or control technologies for large glycol dehydrators, storage vessels with the PFE and equipment leaks and that there have been developments for equipment leaks. See *Technology Review for the Final Amendments to Standards for the Oil and Natural Gas Production and Natural Gas Transmission and Storage Source Categories* and responses on section 112(d)(6) comments below. We also conducted a CAA section 112(d)(6) technology review for subpart HHH and determined that there have been no developments in practices, processes or control technologies for large glycol dehydrators. *Id.*

The remaining comments focus on the data the agency used to set the proposed MACT standards for small glycol dehydrators, which were left unregulated in the 1999 rule. The commenters claim that the data the EPA used to set the BTEX MACT standards for the small glycol dehydrators subcategory are outdated and that the EPA must collect new data. However, CAA section 112(d)(3) specifically provides that the Agency is to determine the average emission limit achieved by the best performing 12 percent of existing sources ''(for which the Administrator has emissions information).'' Thus, the EPA is not required to collect information if it determines that the information it has is sufficient for it to calculate the MACT standards consistent with the requirements of CAA section 112. Although the available emissions information is over a decade old, the available controls for reducing BTEX emissions from small glycol dehydrators and their control efficiencies have remained the same during this period, and the commenters have not provided any data to the contrary.[27] We,

[27] Memorandum from Brown, Heather, EC/R Inc., to Moore, Bruce, U.S. EPA, titled *Technology Review for the Final Amendments to Standards for the Oil and Natural Gas Production and Natural*

Continued

therefore, believe the data we have are still representative of the performance of the small dehydrators.

Moreover, we believe that the collection and analysis of additional data would take time and further delay control of these sources, which we do not think is warranted where, as here, we believe the data on BTEX emissions for the subcategory of small glycol dehydrators are still representative of these sources' performance today and the commenter did not provide any data that indicates otherwise.

Finally, for small glycol dehydrators, we considered using more current available data, like the 2005 NEI, however, the NEI dataset lacks specific information that we believe is relevant to identifying the best performing units. Specifically, the NEI data lacks information on inlet HAP content and gas throughput, both of which affect a glycol dehydrator's HAP emissions. Inlet HAP content varies from well site to well site. A well-controlled glycol dehydrator at a well site with high inlet HAP content may have higher HAP emissions than a totally uncontrolled glycol dehydrator at a well site with a low inlet HAP content. Natural gas throughput also affects a glycol dehydrator's overall emissions (*i.e.,* low throughput units will tend to have lower overall emissions, and vice versa). For the reasons stated above, in addition to emissions, we need to consider the inlet HAP content and gas throughput of the small glycol dehydrators in order to properly identify the best performing sources and establish the MACT standard for this subcategory. However, information on natural gas throughput and inlet HAP content is not included in the NEI or any other readily available data source. Therefore, we used the 1997 data which included such information for the small dehydrators.

Comment: One commenter supports the EPA's regulation of previously unregulated sources in the oil and natural gas sector and the commenter asserts that CAA sections 112(c) and 112(k) (Urban Air Toxics Strategy) support their position regarding the regulation of previously unregulated sources. The commenter asserts that historical regulation of emission sources within the sector leaves a large number of dehydrators, storage vessels and equipment at gas processing plants unregulated. Additionally, the commenter states that historical regulation has also not limited emissions from a number of other emission sources (*i.e.,* wells, pneumatic devices, compressor seals, valves, or flanges or other production equipment located at oil and gas production facilities or natural gas storage transmission facilities).

One commenter supports the EPA's recognition of the need to control emissions from previously uncontrolled emission points and commends the EPA on addressing small glycol dehydration units and storage vessels without the PFE. The commenters request that the EPA address all of the uncontrolled HAP emission points of which it is aware.

Response: This rule establishes MACT standards for major sources of small glycol dehydrators that were left unregulated in the 1999 MACT rule. As explained further below, in several recent rulemakings, we have chosen to fix certain underlying defects in existing MACT standards under CAA sections 112(d)(2) and (3), which are the provisions that directly govern the initial promulgation of MACT standards (see National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries, October 28, 2009, 74 FR 55670; and National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry, April 21, 2011, 76 FR 22566). We believe that this approach is reasonable because using those provisions ensures that the process and considerations are those associated with initially establishing a MACT standard, and it is reasonable to make corrections following the process that would have been followed if we had not made an error at the time of the original promulgation. We appreciate the commenter's support for regulating small glycol dehydrators.

Although the agency had proposed MACT standards under CAA sections 112(d)(2) and (3) for the subcategory of storage vessels without the PFE, we are not finalizing those standards here. Based on our review of the comments, we believe that we need additional data in order to set an emission standard for these vessels. We intend to collect the appropriate data and propose a MACT emission standard under CAA sections 112(d)(2) and (3) of the CAA.

The commenter identifies certain emission sources, other than small glycol dehydrators and storage vessels without the PFE (*e.g.,* wells), that it alleges are uncontrolled. CAA section 112(n)(4)(A) prohibits aggregation of emissions from any oil and gas exploration or production wells (with their associated equipment) in determining major source status or for any purpose under CAA section 112. In light of this prohibition on aggregation, and the fact that the sources identified by the commenter likely would not, if viewed alone, qualify as a major source, it is not clear whether emissions from the sources identified by the commenter can be addressed by a major source NESHAP.[28]

The commenter also references CAA section 112(k) (and the Urban Air Toxic Strategy). CAA section 112(k) is designed to address area source emissions in urban areas. This rule involves a review of 40 CFR part 63, subparts HH and HHH, both of which address major sources, not area sources. Further, oil and gas production facilities are typically not sited in urban areas.

To the extent that the commenter is requesting EPA to list area source oil and gas production wells, such a request is outside the scope of this action. See CAA section 112(n)(4)(B) (specifying certain requirements for listing ''oil and gas production wells (with its associated equipment)'' as an area source category).

B. Major Comments Concerning the Risk Review

Comment: One commenter states that the EPA's analysis for 40 CFR part 63, subpart HH revealed two facilities (Hawkins Gas Plant, Hawkins, Texas, and Kathleen Tharp 2, Huffman, Texas) with a cancer MIR greater than 100-in-1 million based on MACT allowable emissions. The commenter notes that since the EPA determined that these facilities had a cancer MIR greater than 100-in-1 million based on MACT allowable emissions, the EPA determined that the risks are unacceptable for the Oil and Natural Gas Production MACT source category and additional regulation was needed. However, the commenter believes these results are entirely incorrect due to fundamental errors in the EPA's calculations of MACT allowable risk for these two facilities. In addition, even if the analysis had been correct, the commenter states there are significant issues associated with the data for both of these facilities, which the commenter discusses in detail, that the commenter believes are sufficient to invalidate the results and the EPA's conclusion that risks from the Oil and Natural Gas Production source category are unacceptable.

Response: We have reviewed our risk results for the Oil and Natural Gas Production source category and agree

Gas Transmission and Storage Source Categories. Dated April 17, 2012.

[28] Even if the commenter were to identify an unregulated emission point under the NESHAP, it can always petition the agency to revise the 1999 MACT standards.

with the commenter that a number of errors were made in our analysis, including those noted by the commenter. As explained in VII.A.2 of this preamble, we have revised the risk assessment for this major source category to correct certain mistakes made in the analysis supporting the proposed rule.

Based on our revised risk assessment, in which we evaluated the risks that remain after promulgation of the original MACT standards, as well as the MACT standards for small glycol dehydrators established in this final rule, we have determined the risks for the Oil and Natural Gas Production major source category are acceptable and that the MACT standards (including those promulgated here for small glycol dehydrators) provide an ample margin of safety. Further, we are retaining the 0.9 Mg/yr benzene compliance alternative, which we had proposed to remove based on our incorrect conclusion that this alternative was driving the risk for this major source category.

Comment: One commenter states that the EPA bases the decision to eliminate the 0.9 Mg/yr benzene emission limitation for 40 CFR part 63, subpart HHH on two basic factors: (1) It would reduce the cancer MIR from 90-in-1 million to 20-in-1 million, and (2) the cost effectiveness to comply with this option is reasonable. The commenter states that both of these conclusions are erroneous.

First, the commenter states that removal of 0.9 Mg/yr benzene alternative does not reduce risk. The commenter states that the EPA's own technical analysis indicates that removal of the 0.9 Mg/yr benzene alternative would have no effect on the MIR.

Secondly, the commenter states that the EPA's cost analysis is severely flawed. The commenter also states that the EPA noted at proposal, that the cost-effectiveness associated with removing the 0.9 Mg/yr benzene compliance alternative for natural gas transmission and storage facilities was reasonable. However, the commenter explained that the cost estimates used by the EPA in the ample margin of safety determination are inadequate. According to the commenter, the EPA did not conduct any analysis using actual data. Rather, the commenter notes that the EPA used costs estimated for small dehydrators and made general assumptions to estimate an upper-end cost effectiveness for removing the 0.9 Mg/yr benzene alternative limit for large dehydrators at natural gas transmission and storage facilities. The commenter believes that, in general, the emission reductions for dehydrators forced to switch from the 0.9 Mg/yr benzene alternative to 95-percent control would be considerably less than those achieved by small dehydrators. The commenter further notes that the cost-effectiveness calculated for small dehydrators is based on a 95-percent reduction from an uncontrolled baseline level. According to the commenter, if a large dehydrator has installed controls to meet the 0.9 Mg/yr alternative benzene limitation, the cost effectiveness must be based on the incremental reduction between the existing controls and 95 percent. The commenter states that the EPA has provided no evidence that these incremental reductions would be greater than or equal to the 95-percent reductions that would be achieved for smaller dehydrators. In conclusion, the commenter states that the rationale used by the EPA in the preamble to support the removal of the 0.9 Mg/yr compliance alternative for dehydrators at natural gas transmission and storage facilities under section 112(f)(2) of the CAA is not supported by any of the background technical documentation and analyses. The commenter believes that the EPA has no basis under any other CAA authority for this action.

Response: In response to comments, we re-examined our risk assessment for the Natural Gas Transmission and Storage source category and discovered a number of errors, which we have discussed in more detail in section VII.B.2 of this preamble. As explained in that section, we have revised the risk assessment for this major source category to correct the mistakes. Based on our revised risk assessment, in which we evaluated the risks that remain after promulgation of the original MACT standards, as well as the MACT standards for small glycol dehydrators in this final rule, we have determined that the risks for the Oil and Gas Transmission and Storage major source category are acceptable and that the MACT standards (including those promulgated here) provide an ample margin of safety. Further, we are retaining the 0.9 Mg/yr benzene compliance alternative, which we had proposed to remove based on our incorrect conclusion that it was driving the risk for this major source category. We agree with the commenter that removal of the 0.9 Mg/yr benzene compliance alternative does not reduce risks for this major source category. Because we are retaining this compliance alternative, we need not address the comment on the cost effectiveness of removing this alternative.

C. Major Comments Concerning the Technology Review

Comment: One commenter states that, in conducting an 8-year review, the EPA must ''look back'' at the earlier standard and ascertain whether: (1) The standard was adopted using procedures that comply with the law as it has come to be interpreted by the courts; (2) the EPA had sufficiently accurate and comprehensive data at the time of the initial standard setting respecting the emissions profile of the category and properly identified the best performing unit(s); and (3) the EPA had properly used the available data.

The commenter states the EPA then must ''look around'' using currently available data and determine whether: (1) The emissions profile of the industry has changed in a way that would substantially affect the MACT floor calculations (the commenter adds that this includes consideration of any increase in the number of good performing units available for use in the existing source MACT floor calculation and in the performance of the best performing unit); (2) data gaps or uncertainties that affected the earlier decision have been resolved in the interim or can be resolved using new information available to the agency; (3) costs or other factors have changed in a way that would substantially affect the ''beyond-the-floor'' determination; (4) the use of improved practices, processes or technologies (including improvements in the performance of existing technologies) has become more prevalent than at the time of the initial standard setting; or (5) whether newer regulatory requirements, work practices or emission limitations (including state and local jurisdiction air pollution standards and federal enforcement actions), which are more stringent than the existing CAA section 112(d) standard, have shown the achievement or achievability of greater emission reductions than the existing standard requires.

Response: As explained in the preamble to the proposed rule, our technology review focused on the identification and evaluation of ''developments in practices, processes, and control technologies'' since the promulgation of the MACT standards for the two oil and gas source categories at issue here. We first reviewed the available information. In this regard, we reviewed a variety of sources of data, including data obtained in subsequent air toxics rules to see if any practices, processes and control technologies

considered in these actions could be applied to emission sources in the source categories at issue here. We also consulted the EPA's Reasonably Available Control Technology (RACT)/ Best Available Control Technology (BACT)/Lowest Achievable Emission Rate (LAER) Clearinghouse (RBLC) and the Natural Gas STAR program. At proposal, we explained that we consider any of the following to be a ''development'':

—Any add-on control technology or other equipment that was not identified and considered during MACT development;

—Any improvements in add-on control technology or other equipment (that was identified and considered during MACT development) that could result in significant additional emission reduction;

—Any work practice or operational procedure that was not identified and considered during MACT development; and

—Any process change or pollution prevention alternative that could be broadly applied that was not identified and considered during MACT development.

The commenter views CAA section 112(d)(6) differently. It appears to argue that CAA section 112(d)(6) requires that the EPA recalculate the MACT based on current data and technology. The same argument was posed to the District of Columbia Circuit, and the Court ''[did] not think that the words 'review, and revise as necessary' can be construed reasonably as imposing any such obligation.'' *NRDC* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). Thus, contrary to the commenter's assertion, the EPA is not required pursuant to CAA section 112(d)(6) to re-calculate the floors it set in 1999.

To the extent the commenter is arguing that CAA section 112(d)(6) mandates that the EPA correct any deficiency in an underlying MACT standard when it conducts the ''technology review'' under that section, we disagree. We believe that CAA section 112 does not expressly address this issue, and the EPA has discretion in determining how to address a purported flaw in a promulgated standard. CAA section 112(d)(6) provides that the agency must review and revise ''as necessary.'' The ''as necessary'' language must be read in the context of the provision, which focuses on the review of developments that have occurred since the time of the original promulgation of the MACT standard and thus should not be read as a mandate to correct flaws that existed at the time of the original promulgation.

In several recent rulemakings, we have chosen to fix underlying defects in existing MACT standards under CAA sections 112(d)(2) and (3), the provisions that directly govern the initial promulgation of MACT standards (see National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries, October 28, 2009, 74 FR 55670; and National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry, April 21, 2011, 76 FR 22566). We believe that our approach is reasonable because using those provisions ensures that the process and considerations are those associated with initially establishing a MACT standard, and it is reasonable to make corrections following the process that would have been followed if we had not made an error at the time of the original promulgation. As explained elsewhere, we are not finalizing MACT standards for the subcategory of storage vessels without the PFE, which were unregulated in the 1999 rule, because after evaluating the available data and comments received, we believe that we need additional data in order to set an emission standard for these vessels. We are, however, finalizing MACT standards under CAA sections 112(d)(2) and (3) for the subcategory of small glycol dehydration units.

With regard to our CAA section 112(d)(6) review, we found no significant developments in practices, processes and control technologies for reducing emissions from large glycol dehydrators and storage vessels with PFE.[29] Accordingly, we are not revising these standards under CAA section 112(d)(6).

The EPA also conducted a technology review evaluating various options for controlling HAP emissions from equipment leaks. As described in the proposed rule (76 FR 52784), we evaluated advancements in controlling this emissions source since the original standards were promulgated, including the emission reduction potential and associated cost-effectiveness of these advancements. As a result of our review, we revised the leak definition for valves at natural gas processing plants to 500 ppm, thus, requiring the application of the LDAR requirement at this lower detection level. As discussed above, the commenter appears to be arguing that the EPA must redo the MACT floor and beyond-the-floor analysis under CAA sections 112(d)(2) and (3) within its CAA section 112(d)(6) technology review, which we disagree.

Comment: One commenter states that the EPA's technology review for storage vessel control technologies is limited and makes incorrect assumptions. The commenter contends that without further support, the public cannot understand and the EPA cannot justify its proposed decision; therefore, the EPA's proposal is arbitrary and capricious. The commenter adds that the EPA must conduct an updated beyond-the-floor analysis for storage vessels, by determining the ''maximum degree of reduction in emissions'' that is achievable, as required under CAA section 112(d)(2). The commenter states that the proposed rule fails to provide any discussion of a beyond-the-floor determination for storage vessels.

One commenter states that the EPA must examine advances in vapor recovery unit technology and reconsider floating roof technology for tanks containing liquids that do not have the PFE. The commenter contends that the EPA improperly rejected technology advances and developments in pollution prevention systems found in its own RBLC database and employed by its own Natural Gas STAR partners. Specifically, according to the commenter, the EPA failed to evaluate the performance achieved by systems that use thermal or catalytic oxidizers, either alone or in combination with condensers. According to the commenter, the EPA's RBLC review identified a BACT determination for dehydrator efficiency of 98 percent. The commenter also urges the EPA to evaluate the use of combustion devices and vapor recovery units that capture vent steam from the tank and turn it into a saleable product by recompressing the hydrocarbon vapors. The commenter contends that the EPA rejects technology advances by asserting that those technologies were considered in the 1999 rulemaking, but fails to provide support for its decision in either the record of the 1999 rulemaking or the current record. The commenter contends that the EPA must provide a basis for its decisions and conclusions.

Response: For the reasons discussed in the prior response, the EPA disagrees with the commenter's assertion that it must re-do the MACT floor calculations, including the beyond-the-floor determination, for the standards that the agency set in 1999. As to the technologies identified by the commenter, they were in existence and considered by the EPA at the time the EPA promulgated the original MACT

[29] See footnote 25.

standards for storage vessels.[30] [31] In addition, we are not finalizing control requirements for storage vessels without the PFE, as described in section VII.A of this preamble. The record does not support the assertion that the technologies identified by the commenter have advanced in terms of HAP emission reduction or have become significantly more cost effective. As explained in the preamble to the proposed rule (76 FR 52785), we examined technologies that were similar to the cover and route emissions to a control device that the MACT floor requires and, thus, would not result in reductions beyond the existing MACT requirements. Further, evaluation of technologies in the RBLC did not produce any applicable practices, processes or control technologies that were not considered during the original MACT for storage vessels with flash emissions.[32]

D. Major Comments Concerning Notification, Recordkeeping and Reporting Requirements

1. Annual Reports

Comment: One commenter requested that the EPA add a self-certification requirement to the annual report similar to that used in the title V program. The commenter recommended that the final rule require the annual report to include a statement signed by a senior official of the facility attesting to the truth, accuracy and completeness of the report.

The commenter also requested that the EPA require that the annual reports be submitted electronically to facilitate making the reports publicly available. The commenter suggested using social media outlets, smart phone applications and other electronic means to make the annual reports readily available.

Response: The EPA agrees that self-certification is an important mechanism for assuring the public that the information submitted by each facility is accurate. In addition, the title V program has successfully employed self-certification for since its inception. Therefore, we are requiring self-certification, based on requirements in the title V program, in the final rule.

While we agree that having annual reports readily available to the public is a desirable goal, we did not identify any reporting programs or electronic databases that may be used for this purpose without significant modification. Therefore, we are not requiring annual reports to be submitted electronically, but we will continue to evaluate this option in the future.

2. Electronic Reporting of Emissions Data

Several commenters raised similar issues regarding reporting of emissions data under the NESHAP as under the NSPS, described *supra,* and our responses there apply equally here. Please see comments and responses in section IX.F.3 of this preamble.

XI. What are the cost, environmental and economic impacts of the final NESHAP and NSPS amendments?

A. What are the air impacts?

For the oil and natural gas sector NESHAP and NSPS, we estimated the emission reductions that will occur due to the implementation of the final emission limits. The EPA estimated emission reductions based on the control technologies selected by the engineering analysis. These emission reductions associated with the final amendments to 40 CFR part 63, subpart HH and 40 CFR part 63, subpart HHH are based on the estimated population in 2008. Under the finalized limits for glycol dehydration units, we have estimated that the HAP emissions reductions will be 670 tons for existing units subject to the final emissions limits.

For the NSPS, we estimated the emission reductions that will occur due to the implementation of the final emission limits. The EPA estimated emission reductions based on the control technologies selected by the engineering analysis. These emission reductions are based on the estimated population in 2015.

The primary baseline used for the impacts analysis of our NSPS for completions of hydraulically fractured natural gas wells takes into account REC conducted pursuant to state regulations covering these operations and estimates of REC performed voluntarily. To account for REC performed in regulated states, the EPA subsumed emissions reductions and compliance costs in states where these completion-related emissions are already controlled into the baseline. Additionally, based on public comments and reports to the EPA's Natural Gas STAR program, the EPA recognizes that some producers conduct well completions using REC techniques voluntarily for economic and/or environmental objectives as a normal part of business. To account for emissions reductions and costs arising from voluntary implementation of pollution controls, the EPA used information on total emission reductions reported to the EPA by partners of the EPA Natural Gas STAR. This estimate of this voluntary REC activity in the absence of regulation is also included in the baseline.[33] More detailed discussion on the derivation of the baseline is presented in a technical memorandum in the docket, as well as in the Regulatory Impact Analysis (RIA).

Additionally, in the RIA, we provide summary-level estimates of emissions reductions and engineering compliance costs for a case where no voluntary REC are assumed to occur. This alternative case is presented in order to show impacts if conditions were such that REC were no longer performed on a voluntary basis, but, rather, were compelled by the regulation, and serves, in part, to capture the inherent uncertainty in projecting voluntary activity into the future. As such, this alternative case establishes the full universe of emissions reductions that are guaranteed by this NSPS (those that are required to occur under the rule, including those that would likely occur voluntarily). While the primary baseline may better represent actual costs (and emissions reductions) beyond those already expected under business as usual, the alternative case better captures the full amount of emissions reductions where the NSPS acts as a backstop to ensure that emission reduction practices occur (practices covered by this rule).

Under the final NSPS, we have estimated that the emissions reductions to be about 190,000 tons VOC affected facilities subject to the NSPS. The NSPS is also expected to concurrently reduce 1.0 million tons methane and 11,000 tons HAP. We estimate that direct reductions in HAP, methane and VOC for the final rules combined total about 12,000 tons, 1.0 million tons and 190,000 tons, respectively. If voluntary action is not deducted from the NSPS baseline, the emissions reductions achieved by the final NSPS in HAP, methane and VOC are estimated at

[30] See footnote 25.

[31] See EPA Legacy Docket A–94–04 MACT floor memos II–A–006 and –007.

[32] See footnote 25.

[33] Voluntary short-term actions (such as REC) are challenging to capture accurately in a prospective analysis, as such, reductions are not guaranteed to continue. However, Natural Gas STAR represents a nearly 20-year voluntary initiative with participation from 124 natural gas companies operating in the United States, including 28 producers, over a wide historical range of natural gas prices. This unique program and dataset, the significant impact of voluntary REC on the projected cost and emissions reductions (due to significant REC activity), and the fact that REC can actually increase natural gas recovered from natural gas wells (offering a clear incentive to continue the practice), led the agency to conclude that it was appropriate to estimate these particular voluntary actions in the baseline for this rule.

about 19,000 tons, 1.7 million tons and 290,000 tons, respectively.

The EPA received several comments regarding the emission factor selected to calculate whole gas emissions (and the associated VOC emissions) from hydraulically fractured well completions. Comments focused on the data behind the emission factor, what the emission factor is intended to represent and the procedures used to develop the emission factor from the selected data sets. We reviewed all information received and have decided to retain the data set and the analysis conducted to develop the emission factor of 9,000 thousand cubic feet (Mcf) per completion. More detailed discussion is presented in a technical memorandum on this subject in the docket.

B. What are the energy impacts?

Energy impacts in this section are those energy requirements associated with the operation of emission control devices. Potential impacts on the national energy economy from the rule are discussed in the economic impacts section. There would be little national energy demand increase from the operation of any of the environmental controls analyzed under the final NESHAP amendments and final NSPS.

The final NESHAP amendments and final NSPS encourage the use of emission controls that recover hydrocarbon products, such as methane and condensate that can be used on-site as fuel or reprocessed within the production process for sale. We estimated that the final standards will result in net annual costs savings of about $11 million (in 2008 dollars) due to the recovery of salable natural gas and condensate. Thus, the final standards have a positive impact associated with the recovery of non-renewable energy resources.

C. What are the cost impacts?

The estimated total capital cost to comply with the final amendments to 40 CFR part 63, subpart HH for major sources in the Oil and Natural Gas Production source category is approximately $2.6 million. The total capital cost for the final amendments to 40 CFR part 63, subpart HHH for major sources in the Natural Gas Transmission and Storage source category is estimated to be approximately $140,000. All costs are in 2008 dollars.

The total estimated net annual cost to industry to comply with the final amendments to 40 CFR part 63, subpart HH for major sources in the Oil and Natural Gas Production source category is approximately $3.3 million. The total net annual cost for final amendments to 40 CFR part 63, subpart HHH for major sources in the Natural Gas Transmission and Storage source category is estimated to be approximately $180,000. These estimated annual costs include: (1) The cost of capital, (2) operating and maintenance costs, (3) the cost of monitoring, inspection, recordkeeping and reporting (MIRR) and (4) any associated product recovery credits. All costs are in 2008 dollars.

The estimated total capital cost to comply with the final NSPS is approximately $25 million in 2008 dollars. The total estimated net annual cost to industry to comply with the final NSPS is estimated to be approximately $170 million in 2008 dollars. This annual cost estimate includes: (1) The cost of capital, (2) operating and maintenance costs and (3) the cost of MIRR. This estimated annual cost does not take into account any producer revenues associated with the recovery of salable natural gas and hydrocarbon condensates.

When revenues from additional product recovery are considered, the final NSPS is estimated to result in a net annual engineering cost savings overall. When including the additional natural gas recovery in the engineering cost analysis, we assume that producers are paid $4/Mcf for the recovered gas at the wellhead. The engineering analysis cost analysis assumes the value of recovered condensate is $70 per barrel. Based on the engineering analysis, about 43 million Mcf (43 billion cubic feet) of natural gas and 160,000 barrels of condensate are estimated to be recovered by control requirements in 2015. Using the price assumptions, the estimated revenues from natural gas and condensate recovery are approximately $180 million in 2008 dollars.

Using the engineering cost estimates, estimated natural gas product recovery and natural gas product price assumptions, the net annual engineering cost savings is estimated for the final NSPS to be about $15 million. Totals may not sum due to independent rounding.

If voluntary action is not deducted from the baseline, capital costs for the NSPS are estimated at $25 million and annualized costs without revenues from product recovery for the NSPS are estimated at $330 million. In this scenario, given the assumptions about product prices, estimated revenues from product recovery are $350 million, yielding an estimated cost of savings of about $22 million.

As the price assumption is very influential on estimated annualized engineering costs, we performed a simple sensitivity analysis of the influence of the assumed wellhead price paid to natural gas producers on the overall engineering annualized costs estimate of the final NSPS. At $4.22/Mcf, the price forecast reported in the 2011 Annual Energy Outlook in 2008 dollars, the annualized cost savings for the final NSPS are estimated at about $24 million. As indicated by this difference, the EPA has chosen a relatively conservative assumption (leading to an estimate of few savings and higher net costs) for the engineering costs analysis. The natural gas price at which the final NSPS breaks-even from an estimated engineering costs perspective is around $3.66/Mcf. A $1/Mcf change in the wellhead natural gas price leads to a $43 million change in the annualized engineering costs of the final NSPS. Consequently, annualized engineering costs estimates would increase to about $29 million under a $3/Mcf price or decrease to about −$58 million under a $5/Mcf price. For further details on this sensitivity analysis, please refer the RIA for this rulemaking located in the docket.

D. What are the economic impacts?

The analysis of energy system impacts EPA performed using the United States Department of Energy's (DOE) National Energy Modeling System (NEMS) shows that domestic natural gas production is not likely to change in 2015 as a result of the final rules, the year used in the RIA to analyze impacts. Average natural gas prices are also not estimated to change in response to the final rules. Domestic crude oil production is not expected to change, while average crude oil prices are estimated to decrease slightly (about $0.01/barrel or about 0.01 percent at the wellhead for onshore production in the lower 48 states). All prices are in 2008 dollars. The NEMS-based analysis estimates in the year of analysis, 2015, that net imports of natural gas and crude oil will not change.

E. What are the benefits of this final rule?

The final Oil and Natural Gas NSPS and NESHAP amendments are expected to result in significant reductions in existing emissions and prevent new emissions from expansions of the industry. These final rules combined are anticipated to reduce 12,000 tons of HAP, 190,000 tons of VOC (a precursor to both PM (2.5 microns and less) ($PM_{2.5}$) and ozone formation) and 1.0 million tons of methane (a GHG and a precursor to global ozone formation). These pollutants are associated with

substantial health effects, welfare effects and climate effects.

With the data available, we are not able to provide credible health benefit estimates for the reduction in exposure to HAP, ozone and $PM_{2.5}$ for these rules, due to the differences in the locations of oil and natural gas emission points relative to existing information and the highly localized nature of air quality responses associated with HAP and VOC reductions. This is not to imply that there are no benefits of the rules; rather, it is a reflection of the difficulties in modeling the direct and indirect impacts of the reductions in emissions for this industrial sector with the data currently available.[34] In addition to health improvements, there will be improvements in visibility effects, ecosystem effects and climate effects, as well as additional product recovery.

Although we do not have sufficient information or modeling available to provide quantitative estimates for this rulemaking, we include a qualitative assessment of the health effects associated with exposure to HAP, ozone and $PM_{2.5}$ in the RIA for this rule. These qualitative effects are briefly summarized below, but for more detailed information, please refer to the RIA, which is available in the docket. One of the HAP of concern from the oil and natural gas sector is benzene, which is a known human carcinogen. VOC emissions are precursors to both $PM_{2.5}$ and ozone formation. As documented in previous analyses (U.S. EPA, 2006 [35] and U.S. EPA, 2010 [36]), exposure to $PM_{2.5}$ and ozone is associated with significant public health effects. $PM_{2.5}$ is associated with health effects, including premature mortality for adults and infants, cardiovascular morbidity such as heart attacks, and respiratory morbidity such as asthma attacks, acute and chronic bronchitis, hospital admissions and emergency room visits, work loss days, restricted activity days and respiratory symptoms, as well as visibility impairment.[37] Ozone is associated with health effects, including hospital and emergency department visits, school loss days and premature mortality, as well as injury to vegetation and climate effects.[38]

In addition to the improvements in air quality and resulting benefits to human health and non-climate welfare effects previously discussed, this rule is expected to result in significant climate co-benefits due to anticipated methane reductions. Methane is a potent GHG that, once emitted into the atmosphere, absorbs terrestrial infrared radiation, which contributes to increased global warming and continuing climate change. Methane reacts in the atmosphere to form ozone and ozone also impacts global temperatures. According to the Intergovernmental Panel on Climate Change (IPCC) 4th Assessment Report (2007), methane is the second leading long-lived climate forcer after CO_2 globally. Total methane emissions from the oil and gas industry represent about 40 percent of the total methane emissions from all sources and account for about 5 percent of all CO_2e emissions in the United States, with natural gas systems being the single largest contributor to United States anthropogenic methane emissions.[39] Methane, in addition to other GHG emissions, contributes to warming of the atmosphere, which, over time, leads to increased air and ocean temperatures, changes in precipitation patterns, melting and thawing of global glaciers and ice, increasingly severe weather events, such as hurricanes of greater intensity and sea level rise, among other impacts.

This rulemaking requires emission control technologies and regulatory alternatives that will significantly decrease HAP and VOC emissions from the oil and natural gas sector in the United States. As a co-benefit, the emission control measures the industry will use to reduce HAP and VOC emissions will also decrease methane emissions. The NESHAP Amendments and the NSPS combined are expected to reduce methane emissions annually by about 1.0 million short tons or about 19 million metric tons CO_2e. After considering the secondary impacts of this rule as previously discussed, such as increased CO_2 emissions from well completion combustion and decreased CO_2e emissions because of fuel-switching by consumers, the methane reductions become about 18 million metric tons CO_2e. The methane reductions represent about 7 percent of the baseline methane emissions for this sector reported in the EPA's U.S. Greenhouse Gas Inventory Report for 2009 (251.55 million metric tons CO_2e when petroleum refineries and petroleum transportation are excluded because these sources are not examined in this proposal). However, it is important to note that the emission reductions are based upon predicted activities in 2015; the EPA did not forecast sector-level emissions in 2015 for this rulemaking. These emission reductions equate to the climate benefits of taking approximately 4 million typical passenger cars off the road or eliminating electricity use from about 2 million typical homes each year.[40]

The EPA recognizes that the methane reductions from this rule will provide for significant economic climate benefits to society just described. However, the 2009–2010 Interagency Social Cost of Carbon Work Group did not produce directly modeled estimates of the social cost of methane. In the absence of direct model estimates from the interagency analysis, the EPA has used a ''global warming potential (GWP) approach'' to estimate the dollar value of this rule's methane co-benefits. Specifically, the EPA converted methane to CO_2 equivalents using the GWP of methane, then multiplied these CO_2 equivalent emission reductions by the social cost of carbon developed by the Interagency Social Cost of Carbon Work Group.

The social cost of carbon is an estimate of the net present value of the flow of monetized damages from a 1-metric ton increase in CO_2 emissions in

[34] Previous studies have estimated the monetized benefits-per-ton of reducing VOC emissions associated with the effect that those emissions have on ambient $PM_{2.5}$ levels and the health effects associated with $PM_{2.5}$ exposure (Fann, Fulcher, and Hubbell, 2009). While these ranges of benefit-per-ton estimates provide useful context for the break-even analysis, the geographic distribution of VOC emissions from the oil and gas sector are not consistent with emissions modeled in Fann, Fulcher, and Hubbell (2009). In addition, the benefit-per-ton estimates for VOC emission reductions in that study are derived from total VOC emissions across all sectors. Coupled with the larger uncertainties about the relationship between VOC emissions and $PM_{2.5}$ and the highly localized nature of air quality responses associated with HAP and VOC reductions, these factors lead us to conclude that the available VOC benefit-per-ton estimates are not appropriate to calculate monetized benefits of these rules, even as a bounding exercise.

[35] U.S. EPA. RIA. *National Ambient Air Quality Standards for Particulate Matter,* Chapter 5. Office of Air Quality Planning and Standards, Research Triangle Park, NC. October 2006. Available on the Internet at *http://www.epa.gov/ttn/ecas/regdata/RIAs/Chapter%205--Benefits.pdf.*

[36] U.S. EPA. RIA. *National Ambient Air Quality Standards for Ozone.* Office of Air Quality Planning and Standards, Research Triangle Park, NC. January 2010. Available on the Internet at *http://www.epa.gov/ttn/ecas/regdata/RIAs/s1-supplemental_analysis_full.pdf.*

[37] U.S. EPA. *Integrated Science Assessment for Particulate Matter (Final Report).* EPA–600–R–08–139F. National Center for Environmental Assessment—RTP Division. December 2009. Available at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546.*

[38] U.S. EPA. *Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final).* EPA/600/R–05/004aF-cF. Washington, DC: U.S. EPA. February 2006. Available on the Internet at *http://cfpub.epa.gov/ncea/CFM/recordisplay.cfm?deid=149923.*

[39] U.S. EPA (2011), *2011 U.S. Greenhouse Gas Inventory Report* Executive Summary available on the internet at *http://epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011–Executive-Summary.pdf,* accessed 02/13/12.

[40] U.S. EPA. *Greenhouse Gas Equivalency Calculator* available at: *http://www.epa.gov/cleanenergy/energy-resources/calculator.html,* accessed 04/09/12.

a given year (or from the alternative perspective, the benefit to society of reducing CO_2 emissions by 1 ton). For more information about the social cost of carbon, see the *Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.*[41] Applying this approach to the methane reductions estimated for the NESHAP Amendments and NSPS, the 2015 climate co-benefits vary by discount rate and range from about $100 million to approximately $1.3 billion; the mean social cost of carbon at the 3-percent discount rate results in an estimate of about $440 million in 2015.[42]

These co-benefits equate to a range of approximately $110 to $1,400 per short ton of methane reduced, depending upon the discount rate assumed with a per ton estimate of $480 at the 3-percent discount rate. These social cost of methane benefit estimates are not the same as would be derived from direct computations (using the integrated assessment models employed to develop the Interagency Social Cost of Carbon estimates) for a variety of reasons, including the shorter atmospheric lifetime of methane relative to CO_2 (about 12 years compared to CO_2 whose concentrations in the atmosphere decay on timescales of decades to millennia). The climate impacts also differ between the pollutants for reasons other than the radiative forcing profiles and atmospheric lifetimes of these gases.

Methane is a precursor to ozone and ozone is a short-lived climate forcer that contributes to global warming. The use of the IPCC Second Assessment Report GWP to approximate co-benefits may underestimate the direct radiative forcing benefits of reduced ozone levels and does not capture any secondary climate co-benefits involved with ozone-ecosystem interactions. In addition, a recent the EPA National Center of Environmental Economics working paper suggests that this quick ''GWP approach'' to benefits estimation will likely understate the climate benefits of methane reductions in most cases.[43] This conclusion is reached using the 100-year GWP for methane of 25 as put forth in the IPCC Fourth Assessment Report (AR 4), as opposed to the lower value of 21 used in this analysis. Using the higher GWP estimate of 25 would increase these reported methane climate co-benefit estimates by about 19 percent. Although the IPCC Assessment Report (AR4) suggested a GWP of 25 for methane, the EPA has used the GWP of 21 from the IPCC Second Assessment Report to estimate the methane climate co-benefits for this oil and gas rule. The EPA uses the 21 GWP in order to provide estimates more consistent with global GHG inventories, which currently use GWP from the IPCC Second Assessment Report, and with the US GHG Reporting program. See the Regulatory Impact Analysis for further details.

Due to the uncertainties involved with the ''GWP approach'' estimates presented and methane climate co-benefits estimates available in the literature, the EPA chooses not to compare these co-benefit estimates to the costs of the rule for this proposal. Rather, the EPA presents the ''GWP approach'' climate co-benefit estimates as an interim method to produce these estimates until the Interagency Social Cost of Carbon Work Group develops values for non-CO_2 GHG.

For the final NESHAP amendments, a break-even analysis suggests that HAP emissions would need to be valued at $5,200 per ton for the benefits to exceed the costs if the health, ecosystem and climate benefits from the reductions in VOC and methane emissions are assumed to be zero. Even though emission reductions of VOC and methane are co-benefits for the final NESHAP amendments, they are legitimate components of the total benefit-cost comparison. If we assume the health benefits from HAP emission reductions are zero, the VOC emissions would need to be valued at $2,900 per ton or the methane emissions would need to be valued at $8,300 per ton for the co-benefits to exceed the costs. All estimates are in 2008 dollars. For the final NSPS, the revenue from additional product recovery exceeds the costs, which renders a break-even analysis unnecessary when these revenues are included in the analysis. Based on the methodology from Fann, Fulcher, and Hubbell (2009),[44] ranges of benefit-per-ton estimates for emissions of VOC indicate that on average in the United States, VOC emissions are valued from $1,200 to $3,000 per ton as a $PM_{2.5}$ precursor, but emission reductions in specific areas are valued from $280 to $7,000 per ton in 2008 dollars. As a result, even if VOC emissions from oil and natural gas operations result in monetized benefits that are substantially below the national average, there is a reasonable chance that the benefits of the rule would exceed the costs, especially if we were able to monetize all of the additional benefits associated with ozone formation, visibility, HAP and methane.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more. 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 a Regulatory Impact Analysis (RIA) of the potential costs and benefits associated with this action. The RIA available in the docket describes in detail the empirical basis for the EPA's assumptions and characterizes the various sources of uncertainties affecting the estimates below. Table 7 shows the results of the cost and benefits analysis for these final rules.

[41] Interagency Working Group on Social Cost of Carbon (IWGSC). 2010. *Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Docket ID EPA–HQ–OAR–2009–0472–114577. *http://www.epa.gov/otaq/climate/regulations/scc-tsd.pdf,* accessed 02/12/12.

[42] The ratio of domestic to global benefits of emission reductions varies with key parameter assumptions. See Interagency Working Group on Social Cost of Carbon. 2010. *Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.*

[43] Marten and Newbold (2011), *Estimating the Social Cost of Non-CO_2 GHG Emissions: Methane and Nitrous Oxide,* NCEE Working Paper Series #11–01. *http://yosemite.epa.gov/EE/epa/eed.nsf/WPNumber/2011-01?OpenDocument.*

[44] Fann, N., C.M. Fulcher, B.J. Hubbell. *The influence of location, source, and emission type in estimates of the human health benefits of reducing a ton of air pollution.* Air Qual Atmos Health (2009) 2:169–176.

TABLE 7—SUMMARY OF THE MONETIZED BENEFITS, SOCIAL COSTS AND NET BENEFITS FOR THE FINAL OIL AND NATURAL GAS NSPS AND NESHAP AMENDMENTS IN 2015

[Millions of 2008$] [1]

	Final NSPS	Final NESHAP amendments	Final NSPS and NESHAP amendments combined
Total Monetized Benefits [2]	N/A	N/A	N/A.
Total Costs [3]	−$15 million	$3.5 million	−$11 million.
Net Benefits	N/A	N/A	N/A.
Non-monetized Benefits [4]	11,000 tons of HAP 190,000 tons of VOC 1.0 million tons of methane	670 tons of HAP 1,200 tons of VOC 420 tons of methane	12,000 tons of HAP. 190,000 tons of VOC. 1.0 million tons of methane.
	Health effects of HAP exposure. Health effects of $PM_{2.5}$ and ozone exposure. Visibility impairment. Vegetation effects. Climate effects.		

[1] All estimates are for the implementation year (2015).

[2] While we expect that these avoided emissions will result in improvements in air quality and reductions in health effects associated with HAP, ozone, and particulate matter (PM) as well as climate effects associated with methane, we have determined that quantification of those benefits and co-benefits cannot be accomplished for this rule in a defensible way. This is not to imply that there are no benefits or co-benefits of the rules; rather, it is a reflection of the difficulties in modeling the direct and indirect impacts of the reductions in emissions for this industrial sector with the data currently available.

[3] The engineering compliance costs are annualized using a 7-percent discount rate. The negative cost for the final NSPS reflects the inclusion of revenues from additional natural gas and hydrocarbon condensate recovery that are estimated as a result of the NSPS. Possible explanations for why there appear to be negative cost control technologies are discussed in the engineering costs analysis section in the RIA.

[4] For the NSPS, reduced exposure to HAP and climate effects are co-benefits. For the NESHAP, reduced VOC emissions, $PM_{2.5}$ and ozone exposure, visibility and vegetation effects and climate effects are co-benefits. The specific control technologies for the final NSPS are anticipated to have minor secondary disbenefits, including an increase of 1.1 million tons of carbon dioxide (CO_2), 550 tons of nitrogen oxides (NO_X), 19 tons of PM, 3,000 tons of CO and 1,100 tons of total hydrocarbons (THC), as well as emission reductions associated with the energy system impacts. The specific control technologies for the NESHAP are anticipated to have minor secondary disbenefits, but the EPA was unable to estimate these secondary disbenefits. The net CO_2-equivalent emission reductions are 18 million metric tons.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable until OMB approves them.

The ICR documents prepared by the EPA have been assigned EPA ICR numbers 2437.01, 2438.01, 2439.01 and 2440.01. 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. This final rule requires maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

When a malfunction occurs, sources must report them according to the applicable reporting requirements of 40 CFR part 63, subpart HH or 40 CFR part 63, subpart HHH. 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 (sudden, infrequent, not reasonable preventable, and not caused by poor maintenance and/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.

For this rule, the EPA is adding affirmative defense to the estimate of burden in the ICR. 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, the EPA has provided administrative adjustments to this ICR that shows what 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, associated with a single incident totals approximately 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.

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. Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the

EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus, we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small.

For this reason, we estimate a total of 39 such occurrences for all sources subject to 40 CFR part 63, subpart HH, a total of three such occurrences for all sources subject to 40 CFR part 63, subpart HHH, and a total of 6 such occurrences for all sources subject to 40 CFR part 60, subparts KKK and LLL over the 3-year period covered by this ICR. We expect to gather information on such events in the future, and will revise this estimate as better information becomes available.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) is estimated to be $20.1 million. This includes 384,866 labor hours per year at a total labor cost of $19.5 million per year, and annualized capital costs of $0.36 million, and annual operating and maintenance costs of $0.20 million. This estimate includes initial and annual performance tests, semiannual excess emission reports, developing a monitoring plan, notifications and recordkeeping. All burden estimates are in 2008 dollars and represent the most cost-effective monitoring approach for affected facilities. Burden is defined at 5 CFR 1320.3(b).

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 these ICR are approved by OMB, the agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 (SISNOSE). Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impact of this rule on small entities, a small entity is defined as: (1) A small business as defined by NAICS codes 211111, 211112, 221210, 486110 and 486210; whose parent company has no more than 500 employees (or revenues of less than $7 million for firms that transport natural gas via pipeline); (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.

For the final NSPS, the EPA performed an analysis for impacts on a sample of expected affected small entities by comparing compliance costs to entity revenues. The baseline used in this analysis takes into account REC conducted pursuant to state regulations covering these operations and estimates of REC performed voluntarily. To account for REC performed in regulated states, the EPA subsumed emissions reductions and compliance costs in states where these completion-related emissions are already controlled into the baseline. Additionally, based on public comments and reports to the EPA's Natural Gas STAR program, the EPA recognizes that some producers conduct well completions using REC techniques voluntarily for economic and/or environmental objectives as a normal part of business. To account for emissions reductions and costs arising from voluntary implementation of pollution controls, the EPA used information on total emission reductions reported to the EPA by partners of the EPA Natural Gas STAR. This estimate of this voluntary REC activity in the absence of regulation is also included in the baseline. More detailed discussion on the derivation of the baseline is presented in a technical memorandum in the docket, as well as in the RIA.

Based upon the analysis in the RIA, which is in the Docket, when revenue from additional natural gas product recovered is not included, we estimate that 123 of the 127 small firms analyzed (97 percent) are likely to have impacts less than 1 percent in terms of the ratio of annualized compliance costs to revenues. Meanwhile, four firms (3 percent) are likely to have impacts greater than 1 percent. Three of these four firms are likely to have impacts greater than 3 percent. However, when revenue from additional natural gas product recovery is included, we estimate that none of the analyzed firms will have an impact greater than 1 percent.

For the final NESHAP amendments, we estimate that 11 of the 35 firms (31 percent) that own potentially affected facilities are small entities. The EPA performed an analysis for impacts on all expected affected small entities by comparing compliance costs to entity revenues. Among the small firms, none are likely to have impacts greater than 1 percent in terms of the ratio of annualized compliance costs to revenues.

After considering the economic impact of the combined NSPS and NESHAP amendments on small entities, I certify this action will not have a significant impact on a substantial number of small entities (SISNOSE). While both the NSPS and NESHAP amendment would individually result in a no SISNOSE finding, the EPA performed an additional analysis in order to certify the rule in its entirety. This analysis compared compliance costs to entity revenues for the total of all the entities affected by the NESHAP amendments and the sample of entities analyzed for the NSPS. When revenues from additional natural gas product sales are not included, 132 of the 136 small firms (97 percent) in the sample are likely to have impacts of less than 1 percent in terms of the ratio of annualized compliance costs to revenues. Meanwhile, four firms (3 percent) are likely to have impacts greater than 1 percent. Three of these four firms are likely to have impacts greater than 3 percent. When revenues from additional natural gas product sales are included, none of the 136 small firms (100 percent) are likely to have impacts greater than 1 percent.

Our determination is informed by the fact that many affected firms are expected to receive revenues from the additional natural gas and condensate recovery engendered by the implementation of the controls evaluated in this RIA. As much of the additional natural gas recovery is estimated to arise from completion-related activities, we expect the impact

on well-related compliance costs to be significantly mitigated. This conclusion is enhanced because the returns to REC activities occur without a significant time lag between implementing the control and obtaining the recovered product, unlike many control options where the emissions reductions accumulate over long periods of time; the reduced emission completions occur over a short span of time, during which the additional product recovery is also accomplished and payments for recovered products are settled.

Although this final rule will not impact a substantial number of small entities, the EPA, nonetheless, has tried to reduce the impact of this rule on small entities by setting the final emissions limits at the MACT floor, the least stringent level allowed by law.

D. Unfunded Mandates Reform Act

This final action does not contain a federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, and tribal governments, in the aggregate, or to the private sector. The action would not result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, this final rule is not subject to the requirements of sections 202 or 205 of UMRA.

This final 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 because it contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This 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. These final rules primarily affect private industry, and do not impose significant economic costs on state or local governments. On the contrary, we believe the modification provisions discussed in section IX.A for well completions conducted at gas wells constructed on or before August 23, 2011, will reduce permitting burden borne by the States. These provisions will result in fewer sources becoming affected facilities under the NSPS while achieving emission reductions beginning October 15, 2012 equal to those achieved by new sources beginning January 1, 2015. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) the EPA may not issue a regulation that has tribal 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 tribal governments, or the EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

The EPA has concluded that this action will not have tribal implications because it doesn't impose a significant cost to the tribal government. However, there are significant tribal interests because of the growth of the oil and gas production industry in Indian country.

The EPA initiated a consultation process with tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. During the consultation process, the EPA conducted outreach and information meetings prior to the proposal in 2010. The EPA met with the Inter Tribal Environmental Council, which include many of the Region VI tribes, The Tribal leadership summit in Region X, and Tribal Energy Conference hosted by Ft. Belknap, and the National Tribal Forum.

After the proposal was published, letters were sent to all tribal leaders offering to consult on a government-to-government basis on the rule. As part of the consultation process and in response to these letters, an outreach call was held on October 12, 2011. Tribes that participated on this call were: Fond du Lac Band of Lake Superior Chippewa, Fort Belknap Indian Community, Forest County Potawatomi Community, Southern Ute Indian Tribe, and Pueblo of Santa Clara.

In this meeting the tribes were presented the information in the proposal. The tribes asked general clarifying questions but did not provide specific comments. Comments on the proposal were received from an affiliate of the Southern Ute Indian Tribe. The commenter expressed concern about the impacts of the rule on natural gas and oil production operations on the Southern Ute Indian reservation and requested additional time to evaluate the impacts. In response to this and other requests, the comment period was extended. More specific comments can be found in the docket.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action would not relax the control measures on existing regulated sources. The EPA's risk assessments (included in the docket for this final rule) demonstrate that the existing regulations are associated with an acceptable level of risk and provide an ample margin of safety to protect public health.

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. These final rules will result in the addition of control equipment and monitoring systems for existing and new sources within the oil and natural gas industry. The final NESHAP amendments are unlikely to have a significant adverse effect on the supply, distribution, or use of energy. As such, the final NESHAP amendments are not ''significant energy actions'' as defined in Executive Order 13211, (66 FR 28355, May 22, 2001). The final NSPS is also unlikely to have a significant adverse effect on the supply, distribution, or use of energy. As such, the final NSPS is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001).

The basis for these determinations is as follows. Emission controls for the NSPS capture VOC emissions that otherwise would be vented to the atmosphere. Since methane is co-emitted with VOC, a large proportion of the averted methane emissions can be directed into natural gas production streams and sold. One pollution control requirement of the final NSPS also captures saleable condensates. The revenues from additional natural gas and condensate recovery are expected to offset the costs of implementing the final rules.

We use the NEMS to estimate the impacts of the combined final rules on

the United States energy system. The NEMS is a publically available model of the United States energy economy developed and maintained by the Energy Information Administration of the DOE and is used to produce the Annual Energy Outlook, a reference publication that provides detailed forecasts of the United States energy economy.

Based on public comments and reports to EPA's Natural Gas STAR program, the EPA recognizes that some producers conduct well completions using REC techniques, which are required by the final NSPS for certain completions of hydraulically fractured and refractured natural gas wells, voluntarily based upon economic and environmental objectives. The baseline used for the energy system impacts analysis takes into account REC conducted pursuant to state regulations covering these operations and estimates of REC performed voluntarily. To account for REC performed in regulated states, the EPA subsumed emissions reductions and compliance costs in states where these completion-related emissions are already controlled into the baseline. Additionally, based on public comments and reports to the EPA's Natural Gas STAR program, the EPA recognizes that some producers conduct well completions using REC techniques voluntarily for economic and/or environmental objectives as a normal part of business. To account for emissions reductions and costs arising from voluntary implementation of pollution controls, the EPA used information on total emission reductions reported to the EPA by partners of the EPA Natural Gas STAR. This estimate of this voluntary REC activity in the absence of regulation is also included in the baseline. More detailed discussion on the derivation of the baseline is presented in a technical memorandum in the docket, as well as in the RIA.

The analysis of energy system impacts for the final NSPS under the primary baseline shows that domestic natural gas production is not likely to change in 2015, the year used in the RIA to analyze impacts. Average natural gas prices are also not estimated to change in response to the final rules. Domestic crude oil production is not expected to change, while average crude oil prices are estimated to decrease slightly (about $0.01/barrel or about 0.01 percent at the wellhead for onshore production in the lower 48 states). All prices are in 2008 dollars. The NEMS-based analysis estimates in the year of analysis, 2015, that net imports of natural gas and crude oil will not change.

Additionally, the NSPS establishes several performance standards that give regulated entities flexibility in determining how to best comply with the regulation. In an industry that is geographically and economically heterogeneous, this flexibility is an important factor in reducing regulatory burden.

For more information on the estimated energy effects, please refer to the economic impact analysis for this final rule. The analysis is available in the RIA, which is in the public docket.

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. Three VCS were identified as applicable for the purpose of these rules. The VCS ASTM D6522–00 (2005), *Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions From Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers,* is an acceptable alternative to EPA Methods 3A and 10 for identifying nitrogen oxides, carbon monoxide, and oxygen concentrations when the fuel is natural gas. The VCS ASTM D6420–99 (2004), *Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry,* is an acceptable alternative to EPA Method 18. The VCS ANSI/ASME PTC 19.10–1981 (Part 10, Instruments and Apparatus), *Flue and Exhaust Gas Analyses* is an acceptable alternative to EPA Methods 3B and 16A manual portion only, not the instrumental portion.

No potential VCS were identified for EPA Methods 1A, 2A, 2D, 21, and 22.

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 action. 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 18 other VCS that were potentially applicable for these rules in lieu of the EPA reference methods. After reviewing the available standards, the EPA determined that 18 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, ASTM D5835–95 (2007), ISO 10396:1993, ISO 12039:2001, ASTM D6522–00 (2005), CAN/CSA Z223.2–M86 (1999), CAN/CSA Z223.21–M1978, ASTM D3162–94 (2005), ASTM D4323–84 (2009), ASTM D6060–96 (2001), ISO 14965:2000(E), EN 12619 (1999), ASTM D4855–97 (2002)) identified for measuring emissions of pollutants or their surrogates subject to emission standards in the rules would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. Refer to the memorandum in the docket for further details on the EPA's review of these VCS.

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, low-income, or indigenous populations.

To examine the potential for any environmental justice issues that might be associated with each source category, we evaluated the percentages of various social, demographic, and economic groups within the at-risk population living near the facilities where these source categories are located and compared them to national averages. The development of demographic analyses to inform the consideration of environmental justice issues in the EPA rulemakings is an evolving science.

The EPA conducted a demographic analysis, focusing on populations within 50 km of any facility in each of the source categories that are estimated to have HAP exposures which result in cancer risks of 1-in-1 million or greater or non-cancer hazard indices of 1 or greater based on estimates of current HAP emissions. The results of this analysis are documented in the technical report: *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Oil & Natural Gas Production Facilities,* located in the docket for this rulemaking.

As described in the preamble, our risk assessments demonstrate that the regulations for the oil and natural gas production and natural gas transmission and storage source categories, are associated with an acceptable level of risk and that the proposed additional requirements will provide an ample margin of safety to protect public health. Our analyses also show that, for these source categories, there is no potential for an adverse environmental effect or human health multi-pathway effects, and that acute and chronic non-cancer health impacts are unlikely. The EPA has determined that, although there may be an existing disparity in HAP risks from these sources between some demographic groups, no demographic group is exposed to an unacceptable level of risk.

To promote meaningful involvement, the EPA conducted three public hearings on the proposal. The hearings were held in Pittsburgh, Pennsylvania, on September 27, 2011, Denver, Colorado, on September 28, 2011, and Arlington, Texas, on September 29, 2011. A total of 261 people spoke at the three hearings and 735 people attended the hearings. The attendees at the hearings included private citizens, community-based and environmental organizations, industry representatives, associations representing industry and local and state government officials.

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. 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 final 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 a ''major rule'' as defined by 5 U.S.C. 804(2). The final rules will be effective on October 15, 2012.

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 17, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

■ 2. Section 60.17 is amended by:

■ a. Revising paragraph (a) introductory text, (a)(7), (a)(86), (a)(91), and (a)(92);

■ b. Adding paragraphs (a)(95), (a)(96), (a)(97), and (a)(98); and

■ c. Revising paragraph (h) introductory text and (h)(4) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959, Telephone (610) 832–9585, and are also available at the following Web site: *http://www.astm.org;* or ProQuest, 789 East Eisenhower Parkway, Ann Arbor, MI 48106–1346, Telephone (734) 761–4700, and are also available at the following Web site: *http://www.proquest.com.*

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(7) ASTM D86–96, Standard Test Method for Distillation of Petroleum Products (Approved April 10, 1996), IBR approved for §§ 60.562–2(d), 60.593(d), 60.593a(d), 60.633(h) and 60.5401(f).

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(86) ASTM D6522–00 (Reapproved 2005), Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers (Approved October 1, 2005), IBR approved for table 2 of subpart JJJJ of this part, and §§ 60.5413(b) and (d).

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(91) ASTM E169–93, Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis (Approved May 15, 1993), IBR approved for §§ 60.485a(d), 60.593(b), 60.593a(b), 60.632(f) and 60.5400(f).

(92) ASTM E260–96, Standard Practice for Packed Column Gas Chromatography (Approved April 10, 1996), IBR approved for §§ 60.485a(d), 60.593(b), 60.593a(b), 60.632(f), 60.5400(f) and 60.5406(b).

* * * * *

(95) ASTM D3588–98 (Reapproved 2003) Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels (Approved May 10, 2003), IBR approved for § 60.5413(d).

(96) ASTM D4891–89 (Reapproved 2006) Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion (Approved June 1, 2006), IBR approved for § 60.5413(d).

(97) ASTM D1945–03 (Reapproved 2010), Standard Test Method for Analysis of Natural Gas by Gas Chromatography (Approved January 1, 2010), IBR approved for § 60.5413(d).

(98) ASTM D5504–08, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence (Approved June 15, 2008), IBR approved for § 60.5413(d).

* * * * *

(h) The following material is available for purchase from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990, Telephone (800) 843–2763, and are also available at the following Web site: *http://www.asme.org*.

* * * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus] (Issued August 31, 1981), IBR approved for §§ 60.56c(b), 60.63(f), 60.106(e), 60.104a(d), (h), (i) and (j), 60.105a(d), (f) and (g), 60.106a(a), 60.107a(a), (c) and (d), tables 1 and 3 of subpart EEEE, tables 2 and 4 of subpart FFFF, table 2 of subpart JJJJ, §§ 60.4415(a), 60.2145(s) and (t), 60.2710(s), (t) and (w), 60.2730(q), 60.4900(b) and 60.5220(b), tables 1 and 2 to subpart LLLL, tables 2 and 3 to subpart MMMM, §§ 60.5406(c) and 60.5413(b).

* * * * *

Subpart KKK—Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011

■ 3. The heading for Subpart KKK is revised to read as set forth above.

■ 4. Section 60.630 is amended by revising paragraph (b) to read as follows:

§ 60.630 Applicability and designation of affected facility.

* * * * *

(b) Any affected facility under paragraph (a) of this section that commences construction, reconstruction, or modification after January 20, 1984, and on or before August 23, 2011, is subject to the requirements of this subpart.

* * * * *

Subpart LLL—Standards of Performance for SO_2 Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011

■ 5. The heading for Subpart LLL is revised to read as set forth above.

■ 6. Section 60.640 is amended by revising paragraph (d) to read as follows:

§ 60.640 Applicability and designation of affected facilities.

* * * * *

(d) The provisions of this subpart apply to each affected facility identified in paragraph (a) of this section which commences construction or modification after January 20, 1984, and on or before August 23, 2011.

* * * * *

■ 7. Add subpart OOOO, consisting of 60.5360 through 60.5430, to part 60 to read as follows:

Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution

Sec.

60.5360 What is the purpose of this subpart?
60.5365 Am I subject to this subpart?
60.5370 When must I comply with this subpart?
60.5375 What standards apply to gas well affected facilities?
60.5380 What standards apply to centrifugal compressor affected facilities?
60.5385 What standards apply to reciprocating compressor affected facilities?
60.5390 What standards apply to pneumatic controller affected facilities?
60.5395 What standards apply to storage vessel affected facilities?
60.5400 What equipment leak standards apply to affected facilities at an onshore natural gas processing plant?
60.5401 What are the exceptions to the equipment leak standards for affected facilities at onshore natural gas processing plants?
60.5402 What are the alternative emission limitations for equipment leaks from onshore natural gas processing plants?
60.5405 What standards apply to sweetening units at onshore natural gas processing plants?
60.5406 What test methods and procedures must I use for my sweetening units affected facilities at onshore natural gas processing plants?
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Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution

§ 60.5360 What is the purpose of this subpart?

This subpart establishes emission standards and compliance schedules for the control of volatile organic compounds (VOC) and sulfur dioxide (SO_2) emissions from affected facilities that commence construction, modification or reconstruction after August 23, 2011.

§ 60.5365 Am I subject to this subpart?

You are subject to the applicable provisions of this subpart if you are the owner or operator of one or more of the onshore affected facilities listed in paragraphs (a) through (g) of this section for which you commence construction, modification or reconstruction after August 23, 2011.

(a) Each gas well affected facility, which is a single natural gas well.

(b) Each centrifugal compressor affected facility, which is a single centrifugal compressor using wet seals that is located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment. A centrifugal compressor located at a well site, or an adjacent well site and servicing more than one well site, is not an affected facility under this subpart.

(c) Each reciprocating compressor affected facility, which is a single reciprocating compressor located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment. A reciprocating compressor located at a well site, or an adjacent well site and servicing more than one well site, is not an affected facility under this subpart.

(d)(1) For the oil production segment (between the wellhead and the point of custody transfer to an oil pipeline), each pneumatic controller affected facility, which is a single continuous bleed natural gas-driven pneumatic controller operating at a natural gas bleed rate greater than 6 scfh.

(2) For the natural gas production segment (between the wellhead and the point of custody transfer to the natural gas transmission and storage segment and not including natural gas processing plants), each pneumatic controller affected facility, which is a single continuous bleed natural gas-driven pneumatic controller operating at a natural gas bleed rate greater than 6 scfh.

(3) For natural gas processing plants, each pneumatic controller affected facility, which is a single continuous bleed natural gas-driven pneumatic controller.

(e) Each storage vessel affected facility, which is a single storage vessel, located in the oil and natural gas production segment, natural gas processing segment or natural gas transmission and storage segment.

(f) The group of all equipment, except compressors, within a process unit is an affected facility.

(1) Addition or replacement of equipment for the purpose of process improvement that is accomplished without a capital expenditure shall not by itself be considered a modification under this subpart.

(2) Equipment associated with a compressor station, dehydration unit, sweetening unit, underground storage vessel, field gas gathering system, or liquefied natural gas unit is covered by §§ 60.5400, 60.5401, 60.5402, 60.5421, and 60.5422 of this subpart if it is located at an onshore natural gas processing plant. Equipment not located at the onshore natural gas processing plant site is exempt from the provisions of §§ 60.5400, 60.5401, 60.5402, 60.5421, and 60.5422 of this subpart.

(3) The equipment within a process unit of an affected facility located at onshore natural gas processing plants and described in paragraph (f) of this section are exempt from this subpart if they are subject to and controlled according to subparts VVa, GGG or GGGa of this part.

(g) Sweetening units located at onshore natural gas processing plants that process natural gas produced from either onshore or offshore wells.

(1) Each sweetening unit that processes natural gas is an affected facility; and

(2) Each sweetening unit that processes natural gas followed by a sulfur recovery unit is an affected facility.

(3) Facilities that have a design capacity less than 2 long tons per day (LT/D) of hydrogen sulfide (H_2S) in the acid gas (expressed as sulfur) are required to comply with recordkeeping and reporting requirements specified in § 60.5423(c) but are not required to comply with §§ 60.5405 through 60.5407 and §§ 60.5410(g) and 60.5415(g) of this subpart.

(4) Sweetening facilities producing acid gas that is completely reinjected into oil-or-gas-bearing geologic strata or that is otherwise not released to the atmosphere are not subject to §§ 60.5405 through 60.5407, 60.5410(g), 60.5415(g), and 60.5423 of this subpart.

(h) The following provisions apply to gas well facilities that are hydraulically refractured.

(1) A gas well facility that conducts a well completion operation following hydraulic refracturing is not an affected facility, provided that the requirements of § 60.5375 are met. For purposes of this provision, the dates specified in § 60.5375(a) do not apply, and such facilities, as of October 15, 2012, must meet the requirements of § 60.5375(a)(1) through (4).

(2) A well completion operation following hydraulic refracturing at a gas well facility not conducted pursuant to § 60.5375 is a modification to the gas well affected facility.

(3) Refracturing of a gas well facility does not affect the modification status of other equipment, process units, storage vessels, compressors, or pneumatic controllers located at the well site.

(4) Sources initially constructed after August 23, 2011, are considered affected sources regardless of this provision.

§ 60.5370 When must I comply with this subpart?

(a) You must be in compliance with the standards of this subpart no later than October 15, 2012 or upon startup, whichever is later.

(b) The provisions for exemption from compliance during periods of startup, shutdown and malfunctions provided for in 40 CFR 60.8(c) do not apply to this subpart.

(c) 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 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 60.5375 What standards apply to gas well affected facilities?

If you are the owner or operator of a gas well affected facility, you must comply with paragraphs (a) through (f) of this section.

(a) Except as provided in paragraph (f) of this section, for each well completion operation with hydraulic fracturing begun prior to January 1, 2015, you must comply with the requirements of paragraphs (a)(3) and (4) of this section unless a more stringent state or local emission control requirement is applicable; optionally, you may comply with the requirements of paragraphs (a)(1) through (4) of this section. For each new well completion operation with hydraulic fracturing begun on or after January 1, 2015, you must comply with the requirements in paragraphs (a)(1) through (4) of this section.

(1) For the duration of flowback, route the recovered liquids into one or more storage vessels or re-inject the recovered liquids into the well or another well, and route the recovered gas into a gas flow line or collection system, re-inject the recovered gas into the well or another well, use the recovered gas as an on-site fuel source, or use the recovered gas for another useful purpose that a purchased fuel or raw material would serve, with no direct release to the atmosphere. If this is infeasible, follow the requirements in paragraph (a)(3) of this section.

(2) All salable quality gas must be routed to the gas flow line as soon as

practicable. In cases where flowback emissions cannot be directed to the flow line, you must follow the requirements in paragraph (a)(3) of this section.

(3) You must capture and direct flowback emissions to a completion combustion device, except in conditions that may result in a fire hazard or explosion, or where high heat emissions from a completion combustion device may negatively impact tundra, permafrost or waterways. Completion combustion devices must be equipped with a reliable continuous ignition source over the duration of flowback.

(4) You have a general duty to safely maximize resource recovery and minimize releases to the atmosphere during flowback and subsequent recovery.

(b) You must maintain a log for each well completion operation at each gas well affected facility. The log must be completed on a daily basis for the duration of the well completion operation and must contain the records specified in § 60.5420(c)(1)(iii).

(c) You must demonstrate initial compliance with the standards that apply to gas well affected facilities as required by § 60.5410.

(d) You must demonstrate continuous compliance with the standards that apply to gas well affected facilities as required by § 60.5415.

(e) You must perform the required notification, recordkeeping and reporting as required by § 60.5420.

(f)(1) For each gas well affected facility specified in paragraphs (f)(1)(i) and (ii) of this section, you must comply with the requirements of paragraphs (f)(2) and (3) of this section.

(i) Each well completion operation with hydraulic fracturing at a gas well affected facility meeting the criteria for a wildcat or delineation well.

(ii) Each well completion operation with hydraulic fracturing at a gas well affected facility meeting the criteria for a non-wildcat low pressure gas well or non-delineation low pressure gas well.

(2) You must capture and direct flowback emissions to a completion combustion device, except in conditions that may result in a fire hazard or explosion, or where high heat emissions from a completion combustion device may negatively impact tundra, permafrost or waterways. Completion combustion devices must be equipped with a reliable continuous ignition source over the duration of flowback. You must also comply with paragraphs (a)(4) and (b) through (e) of this section.

(3) You must maintain records specified in § 60.5420(c)(1)(iii) for wildcat, delineation and low pressure gas wells.

§ 60.5380 What standards apply to centrifugal compressor affected facilities?

You must comply with the standards in paragraphs (a) through (d) of this section for each centrifugal compressor affected facility.

(a)(1) You must reduce VOC emissions from each centrifugal compressor wet seal fluid degassing system by 95.0 percent or greater.

(2) If you use a control device to reduce emissions, you must equip the wet seal fluid degassing system with a cover that meets the requirements of § 60.5411(b) and is connected through a closed vent system that meets the requirements of § 60.5411(a) to a control device that meets the conditions specified in § 60.5412.

(b) You must demonstrate initial compliance with the standards that apply to centrifugal compressor affected facilities as required by § 60.5410.

(c) You must demonstrate continuous compliance with the standards that apply to centrifugal compressor affected facilities as required by § 60.5415.

(d) You must perform the required notification, recordkeeping, and reporting as required by § 60.5420.

§ 60.5385 What standards apply to reciprocating compressor affected facilities?

You must comply with the standards in paragraphs (a) through (d) of this section for each reciprocating compressor affected facility.

(a) You must replace the reciprocating compressor rod packing according to either paragraph (a)(1) or (2) of this section.

(1) Before the compressor has operated for 26,000 hours. The number of hours of operation must be continuously monitored beginning upon initial startup of your reciprocating compressor affected facility, or October 15, 2012, or the date of the most recent reciprocating compressor rod packing replacement, whichever is later.

(2) Prior to 36 months from the date of the most recent rod packing replacement, or 36 months from the date of startup for a new reciprocating compressor for which the rod packing has not yet been replaced.

(b) You must demonstrate initial compliance with standards that apply to reciprocating compressor affected facilities as required by § 60.5410.

(c) You must demonstrate continuous compliance with standards that apply to reciprocating compressor affected facilities as required by § 60.5415.

(d) You must perform the required notification, recordkeeping, and reporting as required by § 60.5420.

§ 60.5390 What standards apply to pneumatic controller affected facilities?

For each pneumatic controller affected facility you must comply with the VOC standards, based on natural gas as a surrogate for VOC, in either paragraph (b) or (c) of this section, as applicable. Pneumatic controllers meeting the conditions in paragraph (a) of this section are exempt from this requirement.

(a) The requirements of paragraph (b) or (c) of this section are not required if you determine that the use of a pneumatic controller affected facility with a bleed rate greater than 6 standard cubic feet per hour is required based on functional needs, including but not limited to response time, safety and positive actuation.

(b)(1) Each pneumatic controller affected facility at a natural gas processing plant must have a bleed rate of zero.

(2) Each pneumatic controller affected facility at a natural gas processing plant must be tagged with the month and year of installation, reconstruction or modification, and identification information that allows traceability to the records for that pneumatic controller as required in § 60.5420(c)(4)(iv).

(c)(1) Each pneumatic controller affected facility constructed, modified or reconstructed on or after October 15, 2013 at a location between the wellhead and a natural gas processing plant must have a bleed rate less than or equal to 6 standard cubic feet per hour.

(2) Each pneumatic controller affected facility at a location between the wellhead and a natural gas processing plant must be tagged with the month and year of installation, reconstruction or modification, and identification information that allows traceability to the records for that controller as required in § 60.5420(c)(4)(iii).

(d) You must demonstrate initial compliance with standards that apply to pneumatic controller affected facilities as required by § 60.5410.

(e) You must demonstrate continuous compliance with standards that apply to pneumatic controller affected facilities as required by § 60.5415.

(f) You must perform the required notification, recordkeeping, and reporting as required by § 60.5420, except that you are not required to submit the notifications specified in § 60.5420(a).

§ 60.5395 What standards apply to storage vessel affected facilities?

Except as provided in paragraph (d) of this section, you must comply with the standards in this section no later than October 15, 2013 for each storage vessel

affected facility constructed, modified or reconstructed after August 23, 2011, with VOC emissions equal to or greater than 6 tpy, as determined in paragraph (a) of this section.

(a) *Emissions determination*—(1) *Well sites with no other wells in production.* For each storage vessel constructed, modified or reconstructed at a well site with no other wells in production, you must determine the VOC emission rate for each storage vessel affected facility using any generally accepted model or calculation methodology within 30 days after startup, and minimize emissions to the extent practicable during the 30-day period using good engineering practices. For each storage vessel affected facility emitting more than 6 tpy VOC, you must reduce VOC emissions by 95.0 percent or greater within 60 days after startup.

(2) *Well sites with one or more wells already in production.* For each storage vessel constructed, modified or reconstructed at a well site with one or more wells already in production, you must determine the VOC emission rate for each storage vessel affected facility using any generally accepted model or calculation methodology upon startup. For each storage vessel affected facility emitting more than 6 tpy VOC, you must reduce VOC emissions by 95.0 percent or greater upon startup.

(b) *Control requirements.* (1) If you use a control device (such as an enclosed combustion device or vapor recovery device) to reduce emissions, you must equip the storage vessel with a cover that meets the requirements of § 60.5411(b) and is connected through a closed vent system that meets the requirements of § 60.5411(a) to a control device that meets the conditions specified in § 60.5412.

(2) If you use a floating roof to reduce emissions, you must meet the requirements of § 60.112b(a)(1) or (2) and the relevant monitoring, inspection, recordkeeping, and reporting requirements in 40 CFR part 60, subpart Kb.

(c) *Compliance, notification, recordkeeping, and reporting.* (1) You must demonstrate initial compliance with standards that apply to storage vessel affected facilities as required by § 60.5410.

(2) You must demonstrate continuous compliance with standards that apply to storage vessel affected facilities as required by § 60.5415.

(3) You must perform the required notification, recordkeeping, and reporting as required by § 60.5420.

(d) *Exemptions.* This section does not apply to storage vessels subject to and controlled in accordance with the requirements for storage vessels in 40 CFR part 60, subpart Kb, or 40 CFR part 63, subparts G, CC, HH, WW, or HHH.

§ 60.5400 What equipment leak standards apply to affected facilities at an onshore natural gas processing plant?

This section applies to the group of all equipment, except compressors, within a process unit.

(a) You must comply with the requirements of §§ 60.482–1a(a), (b), and (d), 60.482–2a, and 60.482–4a through 60.482–11a, except as provided in § 60.5401.

(b) You may elect to comply with the requirements of §§ 60.483–1a and 60.483–2a, as an alternative.

(c) You may apply to the Administrator for permission to use an alternative means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to that achieved by the controls required in this subpart according to the requirements of § 60.5402 of this subpart.

(d) You must comply with the provisions of § 60.485a of this part except as provided in paragraph (f) of this section.

(e) You must comply with the provisions of §§ 60.486a and 60.487a of this part except as provided in §§ 60.5401, 60.5421, and 60.5422 of this part.

(f) You must use the following provision instead of § 60.485a(d)(1): Each piece of equipment is presumed to be in VOC service or in wet gas service unless an owner or operator demonstrates that the piece of equipment is not in VOC service or in wet gas service. For a piece of equipment to be considered not in VOC service, it must be determined that the VOC content can be reasonably expected never to exceed 10.0 percent by weight. For a piece of equipment to be considered in wet gas service, it must be determined that it contains or contacts the field gas before the extraction step in the process. For purposes of determining the percent VOC content of the process fluid that is contained in or contacts a piece of equipment, procedures that conform to the methods described in ASTM E169–93, E168–92, or E260–96 (incorporated by reference as specified in § 60.17) must be used.

§ 60.5401 What are the exceptions to the equipment leak standards for affected facilities at onshore natural gas processing plants?

(a) You may comply with the following exceptions to the provisions of § 60.5400(a) and (b).

(b)(1) Each pressure relief device in gas/vapor service may be monitored quarterly and within 5 days after each pressure release to detect leaks by the methods specified in § 60.485a(b) except as provided in § 60.5400(c) and in paragraph (b)(4) of this section, and § 60.482–4a(a) through (c) of subpart VVa.

(2) If an instrument reading of 500 ppm or greater is measured, a leak is detected.

(3)(i) When a leak is detected, it must be repaired as soon as practicable, but no later than 15 calendar days after it is detected, except as provided in § 60.482–9a.

(ii) A first attempt at repair must be made no later than 5 calendar days after each leak is detected.

(4)(i) Any pressure relief device that is located in a nonfractionating plant that is monitored only by non-plant personnel may be monitored after a pressure release the next time the monitoring personnel are on-site, instead of within 5 days as specified in paragraph (b)(1) of this section and § 60.482–4a(b)(1) of subpart VVa.

(ii) No pressure relief device described in paragraph (b)(4)(i) of this section must be allowed to operate for more than 30 days after a pressure release without monitoring.

(c) Sampling connection systems are exempt from the requirements of § 60.482–5a.

(d) Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service that are located at a nonfractionating plant that does not have the design capacity to process 283,200 standard cubic meters per day (scmd) (10 million standard cubic feet per day) or more of field gas are exempt from the routine monitoring requirements of §§ 60.482–2a(a)(1) and 60.482–7a(a), and paragraph (b)(1) of this section.

(e) Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service within a process unit that is located in the Alaskan North Slope are exempt from the routine monitoring requirements of §§ 60.482–2a(a)(1), 60.482–7a(a), and paragraph (b)(1) of this section.

(f) An owner or operator may use the following provisions instead of § 60.485a(e):

(1) Equipment is in heavy liquid service if the weight percent evaporated is 10 percent or less at 150 °C (302 °F) as determined by ASTM Method D86–96 (incorporated by reference as specified in § 60.17).

(2) Equipment is in light liquid service if the weight percent evaporated is greater than 10 percent at 150 °C (302 °F) as determined by ASTM Method

D86–96 (incorporated by reference as specified in § 60.17).

(g) An owner or operator may use the following provisions instead of § 60.485a(b)(2): A calibration drift assessment shall be performed, 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 of appendix A–7 of this part, 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 § 60.486a(e)(8). 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 (100 minus the percent of negative drift/ divided by 100) 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 the owner/operator's discretion, all equipment since the last calibration with instrument readings above the appropriate leak definition and below the leak definition multiplied by (100 plus the percent of positive drift/ divided by 100) may be re-monitored.

§ 60.5402 What are the alternative emission limitations for equipment leaks from onshore natural gas processing plants?

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under any design, equipment, work practice or operational standard, the Administrator will publish, in the **Federal Register**, a notice permitting the use of that alternative means for the purpose of compliance with that standard. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section must be published only after notice and an opportunity for a public hearing.

(c) The Administrator will consider applications under this section from either owners or operators of affected facilities, or manufacturers of control equipment.

(d) The Administrator will treat applications under this section according to the following criteria, except in cases where the Administrator concludes that other criteria are appropriate:

(1) The applicant must collect, verify and submit test data, covering a period of at least 12 months, necessary to support the finding in paragraph (a) of this section.

(2) If the applicant is an owner or operator of an affected facility, the applicant must commit in writing to operate and maintain the alternative means so as to achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under the design, equipment, work practice or operational standard.

§ 60.5405 What standards apply to sweetening units at onshore natural gas processing plants?

(a) During the initial performance test required by § 60.8(b), you must achieve at a minimum, an SO_2 emission reduction efficiency (Z_i) to be determined from Table 1 of this subpart based on the sulfur feed rate (X) and the sulfur content of the acid gas (Y) of the affected facility.

(b) After demonstrating compliance with the provisions of paragraph (a) of this section, you must achieve at a minimum, an SO_2 emission reduction efficiency (Z_c) to be determined from Table 2 of this subpart based on the sulfur feed rate (X) and the sulfur content of the acid gas (Y) of the affected facility.

60.5406 What test methods and procedures must I use for my sweetening units affected facilities at onshore natural gas processing plants?

(a) In conducting the performance tests required in § 60.8, you must use the test methods in appendix A of this part or other methods and procedures as specified in this section, except as provided in paragraph § 60.8(b).

(b) During a performance test required by § 60.8, you must determine the minimum required reduction efficiencies (Z) of SO_2 emissions as required in § 60.5405(a) and (b) as follows:

(1) The average sulfur feed rate (X) must be computed as follows:

$$X = KQ_aY$$

Where:

X = average sulfur feed rate, Mg/D (LT/D).

Q_a = average volumetric flow rate of acid gas from sweetening unit, dscm/day (dscf/day).

Y = average H_2S concentration in acid gas feed from sweetening unit, percent by volume, expressed as a decimal.

K = (32 kg S/kg-mole)/((24.04 dscm/kg-mole)(1000 kg S/Mg)).

= 1.331×10^{-3}Mg/dscm, for metric units.

= (32 lb S/lb-mole)/((385.36 dscf/lb-mole)(2240 lb S/long ton)).

= 3.707×10^{-5} long ton/dscf, for English units.

(2) You must use the continuous readings from the process flowmeter to determine the average volumetric flow rate (Q_a) in dscm/day (dscf/day) of the acid gas from the sweetening unit for each run.

(3) You must use the Tutwiler procedure in § 60.5408 or a chromatographic procedure following ASTM E260–96 (incorporated by reference as specified in § 60.17) to determine the H_2S concentration in the acid gas feed from the sweetening unit (Y). At least one sample per hour (at equally spaced intervals) must be taken during each 4-hour run. The arithmetic mean of all samples must be the average H_2S concentration (Y) on a dry basis for the run. By multiplying the result from the Tutwiler procedure by 1.62×10^{-3}, the units gr/100 scf are converted to volume percent.

(4) Using the information from paragraphs (b)(1) and (b)(3) of this section, Tables 1 and 2 of this subpart must be used to determine the required initial (Z_i) and continuous (Z_c) reduction efficiencies of SO_2 emissions.

(c) You must determine compliance with the SO_2 standards in § 60.5405(a) or (b) as follows:

(1) You must compute the emission reduction efficiency (R) achieved by the sulfur recovery technology for each run using the following equation:

$$R = (100S)\frac{\square}{S + E}$$

(2) You must use the level indicators or manual soundings to measure the liquid sulfur accumulation rate in the product storage vessels. You must use readings taken at the beginning and end of each run, the tank geometry, sulfur density at the storage temperature, and sample duration to determine the sulfur production rate (S) in kg/hr (lb/hr) for each run.

(3) You must compute the emission rate of sulfur for each run as follows:

$$E = \frac{C_e Q_{sd}}{K_1}$$

Where:

E = emission rate of sulfur per run, kg/hr.

C_e = concentration of sulfur equivalent (SO^{2+} reduced sulfur), g/dscm (lb/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

K_1 = conversion factor, 1000 g/kg (7000 gr/lb).

(4) The concentration (C_e) of sulfur equivalent must be the sum of the SO_2 and TRS concentrations, after being converted to sulfur equivalents. For each run and each of the test methods specified in this paragraph (c) of this section, you must use a sampling time of at least 4 hours. You must use Method 1 of appendix A to part 60 of this chapter to select the sampling site. The sampling point in the duct must be at the centroid of the cross-section if the area is less than 5 m^2 (54 ft^2) or at a point no closer to the walls than 1 m (39 in) if the cross-sectional area is 5 m^2 or more, and the centroid is more than 1 m (39 in.) from the wall.

(i) You must use Method 6 of appendix A to part 60 of this chapter to determine the SO_2 concentration. You must take eight samples of 20 minutes each at 30-minute intervals. The arithmetic average must be the concentration for the run. The concentration must be multiplied by 0.5×10^{-3} to convert the results to sulfur equivalent.

(ii) You must use Method 15 of appendix A to part 60 of this chapter to determine the TRS concentration from reduction-type devices or where the oxygen content of the effluent gas is less than 1.0 percent by volume. The sampling rate must be at least 3 liters/min (0.1 ft^3/min) to insure minimum residence time in the sample line. You must take sixteen samples at 15-minute intervals. The arithmetic average of all the samples must be the concentration for the run. The concentration in ppm reduced sulfur as sulfur must be multiplied by 1.333×10^{-3} to convert the results to sulfur equivalent.

(iii) You must use Method 16A or Method 15 of appendix A to part 60 of this chapter or ANSI/ASME PTC 19.10–1981, Part 10 (manual portion only) (incorporated by reference as specified in § 60.17) to determine the reduced sulfur concentration from oxidation-type devices or where the oxygen content of the effluent gas is greater than 1.0 percent by volume. You must take eight samples of 20 minutes each at 30-minute intervals. The arithmetic average must be the concentration for the run. The concentration in ppm reduced sulfur as sulfur must be multiplied by 1.333×10^{-3} to convert the results to sulfur equivalent.

(iv) You must use Method 2 of appendix A to part 60 of this chapter to determine the volumetric flow rate of the effluent gas. A velocity traverse must be conducted at the beginning and end of each run. The arithmetic average of the two measurements must be used to calculate the volumetric flow rate (Q_{sd}) for the run. For the determination of the effluent gas molecular weight, a single integrated sample over the 4-hour period may be taken and analyzed or grab samples at 1-hour intervals may be taken, analyzed, and averaged. For the moisture content, you must take two samples of at least 0.10 dscm (3.5 dscf) and 10 minutes at the beginning of the 4-hour run and near the end of the time period. The arithmetic average of the two runs must be the moisture content for the run.

60.5407 What are the requirements for monitoring of emissions and operations from my sweetening unit affected facilities at onshore natural gas processing plants?

(a) If your sweetening unit affected facility is located at an onshore natural gas processing plant and is subject to the provisions of § 60.5405(a) or (b) you must install, calibrate, maintain, and operate monitoring devices or perform measurements to determine the following operations information on a daily basis:

(1) *The accumulation of sulfur product over each 24-hour period.* The monitoring method may incorporate the use of an instrument to measure and record the liquid sulfur production rate, or may be a procedure for measuring and recording the sulfur liquid levels in the storage vessels with a level indicator or by manual soundings, with subsequent calculation of the sulfur production rate based on the tank geometry, stored sulfur density, and elapsed time between readings. The method must be designed to be accurate within ±2 percent of the 24-hour sulfur accumulation.

(2) *The* H_2S *concentration in the acid gas from the sweetening unit for each 24-hour period.* At least one sample per 24-hour period must be collected and analyzed using the equation specified in § 60.5406(b)(1). The Administrator may require you to demonstrate that the H_2S concentration obtained from one or more samples over a 24-hour period is within ±20 percent of the average of 12 samples collected at equally spaced intervals during the 24-hour period. In instances where the H_2S concentration of a single sample is not within ±20 percent of the average of the 12 equally spaced samples, the Administrator may require a more frequent sampling schedule.

(3) *The average acid gas flow rate from the sweetening unit.* You must install and operate a monitoring device to continuously measure the flow rate of acid gas. The monitoring device reading must be recorded at least once per hour during each 24-hour period. The average acid gas flow rate must be computed from the individual readings.

(4) *The sulfur feed rate (X).* For each 24-hour period, you must compute X using the equation specified in § 60.5406(b)(1).

(5) *The required sulfur dioxide emission reduction efficiency for the 24-hour period.* You must use the sulfur feed rate and the H_2S concentration in the acid gas for the 24-hour period, as applicable, to determine the required reduction efficiency in accordance with the provisions of § 60.5405(b).

(b) Where compliance is achieved through the use of an oxidation control system or a reduction control system followed by a continually operated incineration device, you must install, calibrate, maintain, and operate monitoring devices and continuous emission monitors as follows:

(1) *A continuous monitoring system to measure the total sulfur emission rate (E) of* SO_2 *in the gases discharged to the atmosphere.* The SO_2 emission rate must be expressed in terms of equivalent sulfur mass flow rates (kg/hr (lb/hr)). The span of this monitoring system must be set so that the equivalent emission limit of § 60.5405(b) will be between 30 percent and 70 percent of the measurement range of the instrument system.

(2) Except as provided in paragraph (b)(3) of this section: A monitoring device to measure the temperature of the gas leaving the combustion zone of the incinerator, if compliance with § 60.5405(a) is achieved through the use of an oxidation control system or a reduction control system followed by a continually operated incineration device. The monitoring device must be certified by the manufacturer to be accurate to within ±1 percent of the temperature being measured.

(3) When performance tests are conducted under the provision of § 60.8 to demonstrate compliance with the standards under § 60.5405, the temperature of the gas leaving the incinerator combustion zone must be determined using the monitoring device. If the volumetric ratio of sulfur dioxide to sulfur dioxide plus total reduced sulfur (expressed as SO_2) in the gas leaving the incinerator is equal to or less than 0.98, then temperature monitoring may be used to demonstrate that sulfur dioxide emission monitoring is sufficient to determine total sulfur emissions. At all times during the operation of the facility, you must maintain the average temperature of the gas leaving the combustion zone of the incinerator at or above the appropriate level determined during the most recent

performance test to ensure the sulfur compound oxidation criteria are met. Operation at lower average temperatures may be considered by the Administrator to be unacceptable operation and maintenance of the affected facility. You may request that the minimum incinerator temperature be reestablished by conducting new performance tests under § 60.8.

(4) Upon promulgation of a performance specification of continuous monitoring systems for total reduced sulfur compounds at sulfur recovery plants, you may, as an alternative to paragraph (b)(2) of this section, install, calibrate, maintain, and operate a continuous emission monitoring system for total reduced sulfur compounds as required in paragraph (d) of this section in addition to a sulfur dioxide emission monitoring system. The sum of the equivalent sulfur mass emission rates from the two monitoring systems must be used to compute the total sulfur emission rate (E).

(c) Where compliance is achieved through the use of a reduction control system not followed by a continually operated incineration device, you must install, calibrate, maintain, and operate a continuous monitoring system to measure the emission rate of reduced sulfur compounds as SO_2 equivalent in the gases discharged to the atmosphere. The SO_2 equivalent compound emission rate must be expressed in terms of equivalent sulfur mass flow rates (kg/hr (lb/hr)). The span of this monitoring system must be set so that the equivalent emission limit of § 60.5405(b) will be between 30 and 70 percent of the measurement range of the system. This requirement becomes effective upon promulgation of a performance specification for continuous monitoring systems for total reduced sulfur compounds at sulfur recovery plants.

(d) For those sources required to comply with paragraph (b) or (c) of this section, you must calculate the average sulfur emission reduction efficiency achieved (R) for each 24-hour clock interval. The 24-hour interval may begin and end at any selected clock time, but must be consistent. You must compute the 24-hour average reduction efficiency (R) based on the 24-hour average sulfur production rate (S) and sulfur emission rate (E), using the equation in § 60.5406(c)(1).

(1) You must use data obtained from the sulfur production rate monitoring device specified in paragraph (a) of this section to determine S.

(2) You must use data obtained from the sulfur emission rate monitoring systems specified in paragraphs (b) or (c) of this section to calculate a 24-hour average for the sulfur emission rate (E). The monitoring system must provide at least one data point in each successive 15-minute interval. You must use at least two data points to calculate each 1-hour average. You must use a minimum of 18 1-hour averages to compute each 24-hour average.

(e) In lieu of complying with paragraphs (b) or (c) of this section, those sources with a design capacity of less than 152 Mg/D (150 LT/D) of H_2S expressed as sulfur may calculate the sulfur emission reduction efficiency achieved for each 24-hour period by:

$$R = \frac{K_2 S}{X}$$

Where:

R = The sulfur dioxide removal efficiency achieved during the 24-hour period, percent.

K_2 = Conversion factor, 0.02400 Mg/D per kg/hr (0.01071 LT/D per lb/hr).

S = The sulfur production rate during the 24-hour period, kg/hr (lb/hr).

X = The sulfur feed rate in the acid gas, Mg/D (LT/D).

(f) The monitoring devices required in paragraphs (b)(1), (b)(3) and (c) of this section must be calibrated at least annually according to the manufacturer's specifications, as required by § 60.13(b).

(g) The continuous emission monitoring systems required in paragraphs (b)(1), (b)(3), and (c) of this section must be subject to the emission monitoring requirements of § 60.13 of the General Provisions. For conducting the continuous emission monitoring system performance evaluation required by § 60.13(c), Performance Specification 2 of appendix B to part 60 of this chapter must apply, and Method 6 must be used for systems required by paragraph (b) of this section.

§ 60.5408 What is an optional procedure for measuring hydrogen sulfide in acid gas—Tutwiler Procedure?

The Tutwiler procedure may be found in the Gas Engineers Handbook, Fuel Gas Engineering practices, The Industrial Press, 93 Worth Street, New York, NY, 1966, First Edition, Second Printing, page 6/25 (Docket A–80–20–A, Entry II–I–67).

(a) When an instantaneous sample is desired and H_2S concentration is ten grains per 1000 cubic foot or more, a 100 ml Tutwiler burette is used. For concentrations less than ten grains, a 500 ml Tutwiler burette and more dilute solutions are used. In principle, this method consists of titrating hydrogen sulfide in a gas sample directly with a standard solution of iodine.

(b) *Apparatus.* (See Figure 1 of this subpart) A 100 or 500 ml capacity Tutwiler burette, with two-way glass stopcock at bottom and three-way stopcock at top which connect either with inlet tubulature or glass-stoppered cylinder, 10 ml capacity, graduated in 0.1 ml subdivision; rubber tubing connecting burette with leveling bottle.

(c) *Reagents.* (1) Iodine stock solution, 0.1N. Weight 12.7 g iodine, and 20 to 25 g cp potassium iodide for each liter of solution. Dissolve KI in as little water as necessary; dissolve iodine in concentrated KI solution, make up to proper volume, and store in glass-stoppered brown glass bottle.

(2) Standard iodine solution, 1 ml=0.001771 g I. Transfer 33.7 ml of above 0.1N stock solution into a 250 ml volumetric flask; add water to mark and mix well. Then, for 100 ml sample of gas, 1 ml of standard iodine solution is equivalent to 100 grains H_2S per cubic feet of gas.

(3) Starch solution. Rub into a thin paste about one teaspoonful of wheat starch with a little water; pour into about a pint of boiling water; stir; let cool and decant off clear solution. Make fresh solution every few days.

(d) *Procedure.* Fill leveling bulb with starch solution. Raise (L), open cock (G), open (F) to (A), and close (F) when solutions starts to run out of gas inlet. Close (G). Purge gas sampling line and connect with (A). Lower (L) and open (F) and (G). When liquid level is several ml past the 100 ml mark, close (G) and (F), and disconnect sampling tube. Open (G) and bring starch solution to 100 ml mark by raising (L); then close (G). Open (F) momentarily, to bring gas in burette to atmospheric pressure, and close (F). Open (G), bring liquid level down to 10 ml mark by lowering (L). Close (G), clamp rubber tubing near (E) and disconnect it from burette. Rinse graduated cylinder with a standard iodine solution (0.00171 g I per ml); fill cylinder and record reading. Introduce successive small amounts of iodine thru (F); shake well after each addition; continue until a faint permanent blue color is obtained. Record reading; subtract from previous reading, and call difference D.

(e) With every fresh stock of starch solution perform a blank test as follows: Introduce fresh starch solution into burette up to 100 ml mark. Close (F) and (G). Lower (L) and open (G). When liquid level reaches the 10 ml mark, close (G). With air in burette, titrate as during a test and up to same end point. Call ml of iodine used C. Then, Grains H_2S per 100 cubic foot of gas = 100(D–C)

(f) Greater sensitivity can be attained if a 500 ml capacity Tutwiler burette is used with a more dilute (0.001N) iodine solution. Concentrations less than 1.0 grains per 100 cubic foot can be determined in this way. Usually, the starch-iodine end point is much less distinct, and a blank determination of end point, with H_2S-free gas or air, is required.

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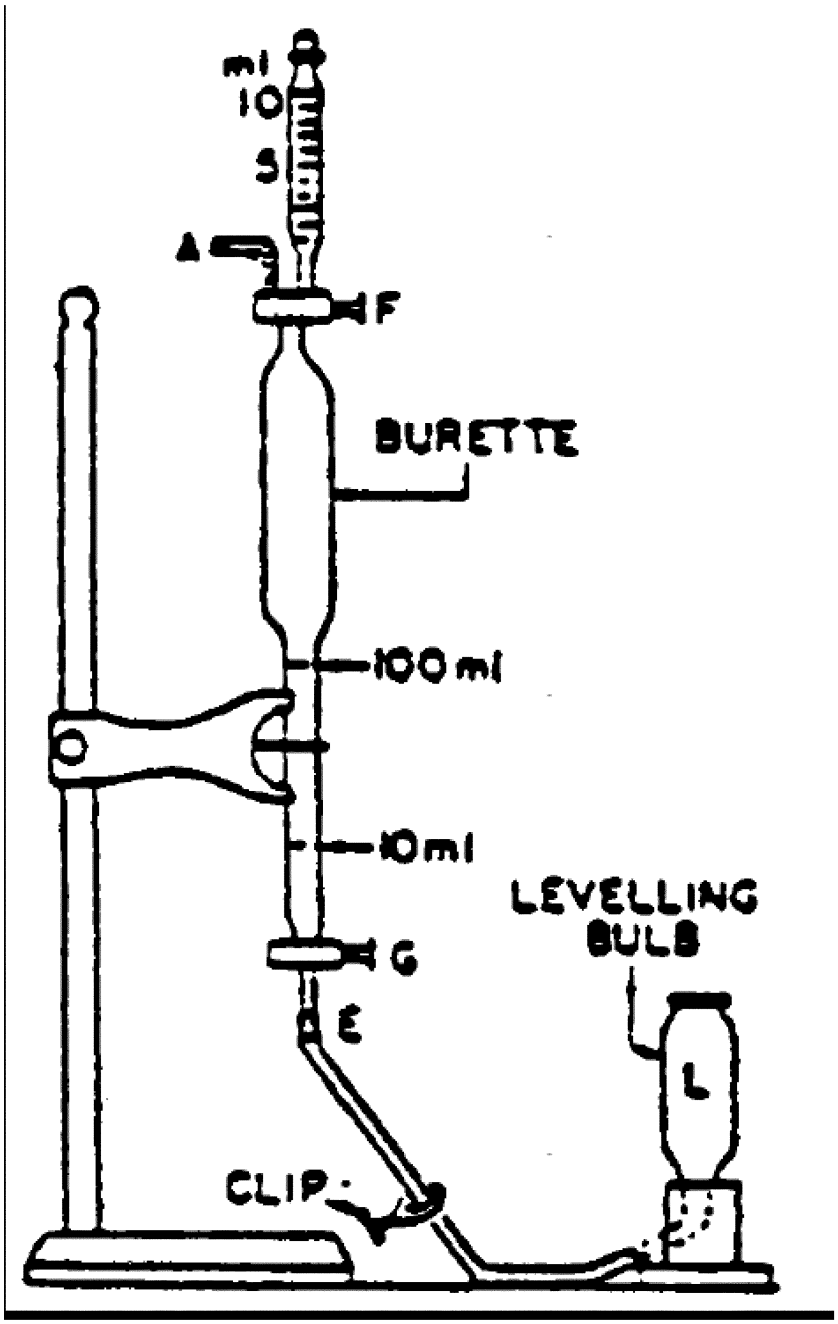

Figure 1. Tutwiler burette (lettered items mentioned in text).

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§ 60.5410 How do I demonstrate initial compliance with the standards for my gas well affected facility, my centrifugal compressor affected facility, my reciprocating compressor affected facility, my pneumatic controller affected facility, my storage vessel affected facility, and my equipment leaks and sweetening unit affected facilities at onshore natural gas processing plants?

You must determine initial compliance with the standards for each affected facility using the requirements in paragraphs (a) through (g) of this section. The initial compliance period begins on October 15, 2012 or upon initial startup, whichever is later, and ends no later than one year after the initial startup date for your affected facility or no later than one year after October 15, 2012. The initial compliance period may be less than one full year.

(a) To achieve initial compliance with the standards for each well completion operation conducted at your gas well affected facility you must comply with paragraphs (a)(1) through (a)(4) of this section.

(1) You must submit the notification required in § 60.5420(a)(2).

(2) You must submit the initial annual report for your well affected facility as required in § 60.5420(b).

(3) You must maintain a log of records as specified in § 60.5420(c)(1) for each well completion operation conducted during the initial compliance period.

(4) For each gas well affected facility subject to both § 60.5375(a)(1) and (3), you must maintain records of one or more digital photographs with the date the photograph was taken and the latitude and longitude of the well site imbedded within or stored with the digital file showing the equipment for storing or re-injecting recovered liquid, equipment for routing recovered gas to the gas flow line and the completion combustion device (if applicable) connected to and operating at each gas well completion operation that occurred during the initial compliance period. As an alternative to imbedded latitude and longitude within the digital photograph, the digital photograph may consist of a photograph of the equipment connected and operating at each well completion operation with a photograph of a separately operating GIS device within the same digital picture, provided the latitude and longitude output of the GIS unit can be clearly read in the digital photograph.

(b)(1) To achieve initial compliance with standards for your centrifugal compressor affected facility you must reduce VOC emissions from each centrifugal compressor wet seal fluid degassing system by 95.0 percent or greater as required by § 60.5380 and as demonstrated by the requirements of § 60.5413.

(2) If you use a control device to reduce emissions, you must equip the wet seal fluid degassing system with a cover that meets the requirements of § 60.5411(b) and is connected through a closed vent system that meets the requirements of § 60.5411(a) to a control device that meets the conditions specified in § 60.5412.

(3) You must conduct an initial performance test as required in § 60.5413 within 180 days after initial startup or by October 15, 2012, whichever is later, and you must comply with the continuous compliance requirements in § 60.5415(b).

(4) You must conduct the initial inspections required in § 60.5416.

(5) You must install and operate the continuous parameter monitoring systems in accordance with § 60.5417.

(6) You must submit the notifications required in 60.7(a)(1), (3), and (4).

(7) You must submit the initial annual report for your centrifugal compressor affected facility as required in § 60.5420(b) for each centrifugal compressor affected facility

(8) You must maintain the records as specified in § 60.5420(c)(3).

(c) To achieve initial compliance with the standards for each reciprocating compressor affected facility you must comply with paragraphs (c)(1) through (4) of this section.

(1) During the initial compliance period, you must continuously monitor the number of hours of operation or track the number of months since the last rod packing replacement.

(2) You must submit the notifications required in 60.7(a)(1), (3), and (4).

(3) You must submit the initial annual report for your reciprocating compressor as required in § 60.5420(b).

(4) You must maintain the records as specified in § 60.5420(c)(3) for each reciprocating compressor affected facility.

(d) To achieve initial compliance with emission standards for your pneumatic controller affected facility you comply with the requirements specified in paragraphs (d)(1) through (6) of this section.

(1) If applicable, you have demonstrated by maintaining records as specified in § 60.5420(c)(4)(ii) of your determination that the use of a pneumatic controller affected facility with a bleed rate greater than 6 standard cubic feet of gas per hour is required as specified in § 60.5390(a).

(2) You own or operate a pneumatic controller affected facility located at a natural gas processing plant and your pneumatic controller is driven other than by use of natural gas and therefore emits zero natural gas.

(3) You own or operate a pneumatic controller affected facility located between the wellhead and a natural gas processing plant and the manufacturer's design specifications indicate that the controller emits less than or equal to 6 standard cubic feet of gas per hour.

(4) You must tag each new pneumatic controller affected facility according to the requirements of § 60.5390(b)(2).

(5) You must include the information in paragraph (d)(1) of this section and a listing of the pneumatic controller affected facilities specified in paragraphs (d)(2) and (3) of this section in the initial annual report submitted for your pneumatic controller affected facilities constructed, modified or reconstructed during the period covered by the annual report according to the requirements of § 60.5420(b).

(6) You must maintain the records as specified in § 60.5420(c)(4) for each pneumatic controller affected facility.

(e) To achieve initial compliance with the emission standards for your storage vessel affected facility you must comply with paragraphs (e)(1) through (9) of this section.

(1) You have determined the VOC emission rate within 30 days after startup for storage vessels constructed, modified or reconstructed at well sites with no other wells in production, and you must use good engineering practices to minimize emissions during the 30-day period.

(2) You must determine the VOC emission rate upon startup for storage vessels constructed, modified or reconstructed at well sites with one or more wells already in production.

(3) For storage vessel affected facilities emitting more than 6 tpy VOC, you must reduce VOC emissions by 95.0 percent or greater within 60 days after startup for storage vessels constructed, modified or reconstructed at well sites with no other wells in production, or upon startup for storage vessels constructed, modified or reconstructed at well sites with one or more wells already in production.

(4) If you use a control device to reduce emissions, you must equip the storage vessel with a cover that meets the requirements of § 60.5411(b) and is connected through a closed vent system that meets the requirements of § 60.5411(a) to a control device that meets the conditions specified in § 60.5412 within 60 days after startup for storage vessels constructed, modified

or reconstructed at well sites with no other wells in production, or upon startup for storage vessels constructed, modified or reconstructed at well sites with one or more wells already in production.

(5) You must conduct an initial performance test as required in § 60.5413 within 180 days after initial startup or within 180 days of October 15, 2013, whichever is later, and must conduct the compliance demonstration in § 60.5415(b).

(6) You must conduct the initial inspections required in § 60.5416.

(7) You must install and operate continuous parameter monitoring systems in accordance with § 60.5417.

(8) You must submit the information in paragraphs (e)(1) through (7) of this section in the initial annual report as required in § 60.5420(b).

(9) You must maintain the records as specified in § 60.5420(c)(5) for each storage vessel affected facility.

(f) For affected facilities at onshore natural gas processing plants, initial compliance with the VOC requirements is demonstrated if you are in compliance with the requirements of § 60.5400.

(g) For sweetening unit affected facilities at onshore natural gas processing plants, initial compliance is demonstrated according to paragraphs (g)(1) through (3) of this section.

(1) To determine compliance with the standards for SO_2 specified in § 60.5405(a), during the initial performance test as required by § 60.8, the minimum required sulfur dioxide emission reduction efficiency (Z_i) is compared to the emission reduction efficiency (R) achieved by the sulfur recovery technology as specified in paragraphs (g)(1)(i) and (ii) of this section.

(i) If $R \geq Z_i$, your affected facility is in compliance.

(ii) If $R < Z_i$, your affected facility is not in compliance.

(2) The emission reduction efficiency (R) achieved by the sulfur reduction technology must be determined using the procedures in § 60.5406(c)(1).

(3) You have submitted the results of paragraphs (g)(1) and (2) of this section in the initial annual report submitted for your sweetening unit affected facilities at onshore natural gas processing plants.

§ 60.5411 What additional requirements must I meet to determine initial compliance for my closed vent systems routing materials from storage vessels and centrifugal compressor wet seal degassing systems?

You must meet the applicable requirements of this section for each cover and closed vent system used to comply with the emission standards for your storage vessel or centrifugal compressor affected facility.

(a) *Closed vent system requirements.* (1) You must design the closed vent system to route all gases, vapors, and fumes emitted from the material in the storage vessel or wet seal fluid degassing system to a control device that meets the requirements specified in § 60.5412.

(2) You must design and operate the closed vent system with no detectable emissions as demonstrated by § 60.5416(b).

(3) You must meet the requirements specified in paragraphs (a)(3)(i) and (ii) of this section if the closed vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device.

(i) Except as provided in paragraph (a)(3)(ii) of this section, you must comply with either paragraph (a)(3)(i)(A) or (B) of this section for each bypass device.

(A) You must properly install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that could divert the stream away from the control device to the atmosphere that is capable of taking periodic readings as specified in § 60.5416(a)(4) and sounds an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device to the atmosphere.

(B) You must secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (a)(3)(i) of this section.

(b) *Cover requirements.* (1) The cover and all openings on the cover (*e.g.,* access hatches, sampling ports, and gauge wells) shall form a continuous barrier over the entire surface area of the liquid in the storage vessel or wet seal fluid degassing system.

(2) Each cover opening shall be secured in a closed, sealed position (*e.g.,* covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed except during those times when it is necessary to use an opening as follows:

(i) To add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit);

(ii) To inspect or sample the material in the unit;

(iii) To inspect, maintain, repair, or replace equipment located inside the unit; or

(iv) To vent liquids, gases, or fumes from the unit through a closed-vent system to a control device designed and operated in accordance with the requirements of paragraph (a) of this section.

§ 60.5412 What additional requirements must I meet for determining initial compliance with control devices used to comply with the emission standards for my storage vessel or centrifugal compressor affected facility?

You must meet the applicable requirements of this section for each control device used to comply with the emission standards for your storage vessel or centrifugal compressor affected facility.

(a) If you use a control device to meet the emission reduction standard in § 60.5380(a)(1) for your centrifugal compressor or § 60.5395(a)(1) or (2) for your storage vessel, you must use one of the control devices specified in paragraphs (a)(1) through (3) of this section. You must demonstrate that the control device achieves the performance requirements using the performance test methods and procedures specified in § 60.5413.

(1) You must design and operate an enclosed combustion device (*e.g.,* thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) in accordance with one of the performance requirements specified in paragraphs (a)(1)(i) through (iv) of this section.

(i) You must reduce the mass content of VOC in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 60.5413.

(ii) You must reduce the concentration of TOC in the exhaust gases at the outlet to the device to a level equal to or less than 20 parts per million by volume on a dry basis corrected to 3 percent oxygen as determined in accordance with the requirements of § 60.5413.

(iii) You must operate at a minimum temperature of 760 °C for a control device that can demonstrate a uniform combustion zone temperature during the performance test conducted under § 60.5413.

(iv) If a boiler or process heater is used as the control device, then you must introduce the vent stream into the flame zone of the boiler or process heater.

(2) You must design and operate a vapor recovery device (*e.g.,* carbon adsorption system or condenser) or other non-destructive control device to reduce the mass content of VOC in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 60.5413. The vapor recovery device must meet the design analysis requirements of § 60.5413(c).

(3) You must design and operate a flare in accordance with the requirements of § 60.5413.

(b) You must operate each control device in accordance with the requirements specified in paragraphs (b)(1) and (2) of this section.

(1) You must operate each control device used to comply with this subpart at all times when gases, vapors, and fumes are vented from the storage vessel affected facility, as required under § 60.5395, or wet seal fluid degassing system affected facility, as required under § 60.5380, through the closed vent system to the control device. You may vent more than one affected facility to a control device used to comply with this subpart.

(2) For each control device monitored in accordance with the requirements of § 60.5417, you must demonstrate compliance according to the requirements of § 60.5415(e)(2), as applicable.

(c) For each carbon adsorption system used as a control device to meet the requirements of paragraph (a)(2) of this section, you must manage the carbon in accordance with the requirements specified in paragraphs (c)(1) or (2) of this section.

(1) Following the initial startup of the control device, you must replace all carbon in the control device with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established according to § 60.5413(c)(2) or (3) for the carbon adsorption system. You must maintain records identifying the schedule for replacement and records of each carbon replacement as required in § 60.5420(c)(6).

(2) You must either regenerate, reactivate, or burn the spent carbon removed from the carbon adsorption system in one of the units specified in paragraphs (c)(2)(i) through (vii) of this section.

(i) Regenerate or reactivate the spent carbon in a thermal treatment unit for which you have been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart X.

(ii) Regenerate or reactivate the spent carbon in a thermal treatment unit equipped with and operating air emission controls in accordance with this section.

(iii) Regenerate or reactivate the spent carbon in a thermal treatment unit equipped with and operating organic air emission controls in accordance with an emissions standard for VOC under another subpart in 40 CFR part 60 or this part.

(iv) Burn the spent carbon in a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 264, subpart O.

(v) Burn the spent carbon in a hazardous waste incinerator which you have designed and operated in accordance with the requirements of 40 CFR part 265, subpart O.

(vi) Burn the spent carbon in a boiler or industrial furnace for which you have been issued a final permit under 40 CFR part 270 that implements the requirements of 40 CFR part 266, subpart H.

(vii) Burn the spent carbon in a boiler or industrial furnace that you have designed and operated in accordance with the interim status requirements of 40 CFR part 266, subpart H.

§ 60.5413 What are the performance testing procedures for control devices used to demonstrate compliance at my storage vessel or centrifugal compressor affected facility?

This section applies to the performance testing of control devices used to demonstrate compliance with the emissions standards for your storage vessel or centrifugal compressor affected facility. You must demonstrate that a control device achieves the performance requirements of § 60.5412(a) using the performance test methods and procedures specified in paragraph (b) of this section. For condensers, you may use a design analysis as specified in paragraph (c) of this section in lieu of complying with paragraph (b) of this section.

(a) *Performance test exemptions.* You are exempt from the requirements to conduct performance tests and design analyses if you use any of the control devices described in paragraphs (a)(1) through (7) of this section.

(1) A flare that is designed and operated in accordance with § 60.18(b). You must conduct the compliance determination using Method 22 at 40 CFR part 60, appendix A–7, to determine visible emissions.

(2) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(3) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel.

(4) A boiler or process heater burning hazardous waste for which you have either been issued a final permit under 40 CFR part 270 and comply with the requirements of 40 CFR part 266, subpart H; or you have certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(5) A hazardous waste incinerator for which you have been issued a final permit under 40 CFR part 270 and comply with the requirements of 40 CFR part 264, subpart O; or you have certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(6) A performance test is waived in accordance with § 60.8(b).

(7) A control device that can be demonstrated to meet the performance requirements of § 60.5412(a) through a performance test conducted by the manufacturer, as specified in paragraph (d) of this section.

(b) *Test methods and procedures.* You must use the test methods and procedures specified in paragraphs (b)(1) through (5) of this section, as applicable, for each performance test conducted to demonstrate that a control device meets the requirements of § 60.5412(a). You must conduct the initial and periodic performance tests according to the schedule specified in paragraph (b)(5) of this section.

(1) You must use Method 1 or 1A at 40 CFR part 60, appendix A–1, as appropriate, to select the sampling sites specified in paragraphs (b)(1)(i) and (ii) of this section. Any references to particulate mentioned in Methods 1 and 1A do not apply to this section.

(i) Sampling sites must be located at the inlet of the first control device, and at the outlet of the final control device, to determine compliance with the control device percent reduction requirement specified in § 60.5412(a)(1)(i) or (a)(2).

(ii) The sampling site must be located at the outlet of the combustion device to determine compliance with the enclosed combustion device total TOC concentration limit specified in § 60.5412(a)(1)(ii).

(2) You must determine the gas volumetric flowrate using Method 2, 2A, 2C, or 2D at 40 CFR part 60, appendix A–2, as appropriate.

(3) To determine compliance with the control device percent reduction performance requirement in § 60.5412(a)(1)(i) or (a)(2), you must use Method 25A at 40 CFR part 60, appendix A–7. You must use the procedures in paragraphs (b)(3)(i)

through (iv) of this section to calculate percent reduction efficiency.

(i) For each run, you must take either an integrated sample or a minimum of four grab samples per hour. If grab sampling is used, then the samples must be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) You must compute the mass rate of TOC (minus methane and ethane) using the equations and procedures specified in paragraphs (b)(3)(ii)(A) and (B) of this section.

(A) You must use the following equations:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

Where:

E_i, E_o = Mass rate of TOC (minus methane and ethane) at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

n = Number of components in sample.

(B) When calculating the TOC mass rate, you must sum all organic compounds (minus methane and ethane) measured by Method 25A at 40 CFR part 60, appendix A–7 using the equations in paragraph (b)(3)(ii)(A) of this section.

(iii) You must calculate the percent reduction in TOC (minus methane and ethane) as follows:

$$R_{cd} = \frac{E_i - E_o}{E_i} * 100\%$$

Where:

R_{cd} = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) at the inlet to the control device as calculated under paragraph (b)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o = Mass rate of TOC (minus methane and ethane) at the outlet of the control device, as calculated under paragraph (b)(3)(ii) of this section, kilograms TOC per hour per hour.

(iv) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, you must determine the weight-percent reduction of total TOC (minus methane and ethane) across the device by comparing the TOC (minus methane and ethane) in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) exiting the device, respectively.

(4) You must use Method 25A at 40 CFR part 60, appendix A–7 to measure TOC (minus methane and ethane) to determine compliance with the enclosed combustion device total VOC concentration limit specified in § 60.5412(a)(1)(ii). You must calculate parts per million by volume concentration and correct to 3 percent oxygen, using the procedures in paragraphs (b)(4)(i) through (iii) of this section.

(i) For each run, you must take either an integrated sample or a minimum of four grab samples per hour. If grab sampling is used, then the samples must be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) You must calculate the TOC concentration for each run as follows:

$$C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=i}^{n} C_{ji}\right)}{x}$$

Where:

C_{TOC} = Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ji} = Concentration of sample component j of sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(iii) You must correct the TOC concentration to 3 percent oxygen as specified in paragraphs (b)(4)(iii)(A) and (B) of this section.

(A) You must use the emission rate correction factor for excess air, integrated sampling and analysis procedures of Method 3A or 3B at 40 CFR part 60, appendix A, ASTM D6522–00 (Reapproved 2005), or ANSI/ASME PTC 19.10–1981, Part 10 (manual portion only) (incorporated by reference as specified in § 60.17) to determine the oxygen concentration. The samples must be taken during the same time that the samples are taken for determining TOC concentration.

(B) You must correct the TOC concentration for percent oxygen as follows:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right)$$

Where:

C_c = TOC concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = TOC concentration, dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(5) You must conduct performance tests according to the schedule specified in paragraphs (b)(5)(i) and (ii) of this section.

(i) You must conduct an initial performance test within 180 days after initial startup for your affected facility. You must submit the performance test results as required in § 60.5420(b)(7).

(ii) You must conduct periodic performance tests for all control devices required to conduct initial performance tests except as specified in paragraphs (b)(5)(ii)(A) and (B) of this section. You must conduct the first periodic performance test no later than 60 months after the initial performance test required in paragraph (b)(5)(i) of this section. You must conduct subsequent periodic performance tests at intervals no longer than 60 months following the previous periodic performance test or whenever you desire to establish a new operating limit. You must submit the periodic performance test results as specified in § 60.5420(b)(7). Combustion control devices meeting the criteria in either paragraph (b)(5)(ii)(A) or (B) of this section are not required to conduct periodic performance tests.

(A) A control device whose model is tested under, and meets the criteria of paragraph (d) of this section.

(B) A combustion control device tested under paragraph (b) of this section that meets the outlet TOC performance level specified in § 60.5412(a)(1)(ii) and that establishes a correlation between firebox or combustion chamber temperature and the TOC performance level.

(c) *Control device design analysis to meet the requirements of § 60.5412(a).* (1) For a condenser, the design analysis must include an analysis of the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and must establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design

average temperatures of the coolant fluid at the condenser inlet and outlet.

(2) For a regenerable carbon adsorption system, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for the carbon beds, design total regeneration stream flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(3) For a nonregenerable carbon adsorption system, such as a carbon canister, the design analysis shall include the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, capacity of the carbon bed, type and working capacity of activated carbon used for the carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule. In addition, these systems will incorporate dual carbon canisters in case of emission breakthrough occurring in one canister.

(4) If you and the Administrator do not agree on a demonstration of control device performance using a design analysis, then you must perform a performance test in accordance with the requirements of paragraph (b) of this section to resolve the disagreement. The Administrator may choose to have an authorized representative observe the performance test.

(d) *Performance testing for combustion control devices—manufacturers' performance test.* The manufacturer must demonstrate that a specific model of combustion control device achieves the performance requirements in paragraph (d)(1) of this section by conducting a performance test as specified in paragraphs (d)(2) through (8) of this section. You must submit a test report for each combustion control device in accordance with the requirements in paragraphs (d)(9) of this section.

(1) The manufacturer must meet the performance test criteria in paragraphs (d)(1)(i) through (iii) of this section.

(i) The control device model tested must meet the emission levels in paragraphs (d)(1)(i)(A) through (C) of this section.

(A) Method 22 at 40 CFR part 60, appendix A–7, results under paragraph (d)(6)(iv) of this section with no indication of visible emissions.

(B) Average Method 25A at 40 CFR part 60, appendix A–7, results under paragraph (d)(8) of this section equal to or less than 10.0 parts per million by volume-wet THC as propane corrected to 3.0 percent carbon dioxide, and

(C) Average carbon monoxide emissions determined under paragraph (d)(6)(iii) of this section equal to or less than 10 parts per million by volume-dry, corrected to 3.0 percent carbon dioxide.

(ii) The manufacturer must determine a maximum inlet gas flow rate, which must not be exceeded for each control device model to achieve the criteria in paragraph (d)(1)(i) of this section.

(iii) A control device meeting the emission levels in paragraph (d)(1)(i)(A) through (C) of this section must demonstrate a minimum destruction efficiency of 95.0 percent for VOC regulated under this subpart.

(2) Performance testing must consist of three one-hour (or longer) test runs for each of the four firing rate settings in paragraphs (d)(2)(i) through (iv) of this section, making a total of 12 test runs per test. The manufacturer must use propene (propylene) gas for the testing fuel. An independent third-party laboratory (not affiliated with the control device manufacturer or fuel supplier) must perform all fuel analyses.

(i) 90–100 percent of maximum design rate (fixed rate).

(ii) 70–100–70 percent (ramp up, ramp down). Begin the test at 70 percent of the maximum design rate. Within the first 5 minutes, ramp up the firing rate to 100 percent of the maximum design rate. Hold at 100 percent for 5 minutes. In the 10–15 minute time range, ramp back down to 70 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iii) 30–70–30 percent (ramp up, ramp down). Begin the test at 30 percent of the maximum design rate. Within the first 5 minutes, ramp up the firing rate to 70 percent of the maximum design rate. Hold at 70 percent for 5 minutes. In the 10–15 minute time range, ramp back down to 30 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iv) 0–30–0 percent (ramp up, ramp down). Begin the test at 0 percent of the maximum design rate. Within the first 5 minutes, ramp up the firing rate to 100 percent of the maximum design rate. Hold at 30 percent for 5 minutes. In the 10–15 minute time range, ramp back down to 0 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(3) The manufacturer must test all models employing multiple enclosures simultaneously and with all burners operational. The manufacturer must report results for each enclosure individually and for the average of the emissions from all interconnected combustion enclosures/chambers. Control device operating data must be collected continuously throughout the performance test using an electronic Data Acquisition System and strip chart. The manufacturer must submit data with the test report in accordance with paragraph (d)(9) of this section.

(4) The manufacturer must conduct inlet testing as specified in paragraphs (d)(4)(i) through (iii) of this section.

(i) The fuel flow metering system must be located in accordance with Method 2A at 40 CFR part 60, appendix A–1, (or other approved procedure) to measure fuel flow rate at the control device inlet location. You must position the fitting for filling fuel sample containers a minimum of eight pipe diameters upstream of any inlet fuel flow monitoring meter.

(ii) The manufacturer must determine the inlet flow rate using Method 2A at 40 CFR part 60, appendix A–1. Record the start and stop reading for each 60-minute THC test. Record the gas pressure and temperature at 5-minute intervals throughout each 60-minute THC test.

(iii) The manufacturer must conduct inlet fuel sampling in accordance with the criteria in paragraph (d)(5) of this section.

(5) The manufacturer must conduct inlet fuel sampling as specified in paragraphs (d)(5)(i) and (ii) of this section.

(i) At the inlet fuel sampling location, the manufacturer must securely connect a Silonite-coated stainless steel evacuated canister fitted with a flow controller sufficient to fill the canister over a 1 hour period. Filling must be conducted as specified in paragraphs (d)(5)(i)(A) through (C) of this section.

(A) Open the canister sampling valve at the beginning of the total hydrocarbon test, and close the canister at the end of the total hydrocarbon test.

(B) Fill one canister for each total hydrocarbon test run.

(C) Label the canisters individually and record on a chain of custody form.

(ii) The manufacturer must analyze each fuel sample using the methods in paragraphs (d)(5)(ii)(A) through (D) of this section. You must include the results in the test report in paragraph (d)(9) of this section.

(A) Hydrocarbon compounds containing between one and five atoms of carbon plus benzene using ASTM D1945–03 (Reapproved 2010) (incorporated by reference as specified in § 60.17).

(B) Hydrogen (H_2), carbon monoxide (CO), carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2) using ASTM D1945–03 (Reapproved 2010) (incorporated by reference as specified in § 60.17).

(C) Carbonyl sulfide, carbon disulfide plus mercaptans using ASTM D5504–08 (incorporated by reference as specified in § 60.17).

(D) Higher heating value using ASTM D3588–98 (Reapproved 2003) or ASTM D4891–89 (Reapproved 2006) (incorporated by reference as specified in § 60.17).

(6) The manufacturer must conduct outlet testing in accordance with the criteria in paragraphs (d)(6)(i) through (iv) and (d)(7) of this section.

(i) The manufacturer must sample and measure flowrate in accordance with the following:

(A) The manufacturer must position the outlet sampling location a minimum of four equivalent stack diameters downstream from the highest peak flame or any other flow disturbance, and a minimum of one equivalent stack diameter upstream of the exit or any other flow disturbance. A minimum of two sample ports must be used.

(B) The manufacturer must measure flow rate using Method 1 at 40 CFR part 60, appendix A–1 for determining flow measurement traverse point location, and Method 2 at 40 CFR part 60, appendix A–1 for measuring duct velocity. If low flow conditions are encountered (*i.e.,* velocity pressure differentials less than 0.05 inches of water) during the performance test, a more sensitive manometer must be used to obtain an accurate flow profile.

(ii) The manufacturer must determine molecular weight as specified in paragraph (d)(7) of this section.

(iii) The manufacturer must determine carbon monoxide using Method 10 at 40 CFR part 60, appendix A–4 or ASTM D6522–00 (Reapproved 2005) (incorporated by reference as specified in § 60.17). The manufacturer must run the test at the same time and with the sample points used for the Method 25A at 40 CFR part 60, appendix A–7, testing. An instrument range of 0–10 parts per million by volume-dry (ppmvd) must be used.

(iv) The manufacturer must determine visible emissions using Method 22 at 40 CFR part 60, appendix A–7. The test must be performed continuously during each test run. A digital color photograph of the exhaust point, taken from the position of the observer and annotated with date and time, will be taken once per test run and the four photos included in the test report.

(7) The manufacturer must determine molecular weight as specified in paragraphs (d)(7)(i) and (ii) of this section.

(i) The manufacturer must collect an integrated bag sample during the Method 4 at 40 CFR part 60, appendix A–3, moisture test. The manufacturer must analyze the bag sample using a gas chromatograph-thermal conductivity detector (GC–TCD) analysis meeting the criteria in paragraphs (d)(7)(i)(A) through (D) of this section.

(A) Collect the integrated sample throughout the entire test, and collect representative volumes from each traverse location.

(B) Purge the sampling line with stack gas before opening the valve and beginning to fill the bag.

(C) Knead or otherwise vigorously mix the bag contents prior to the gas chromatograph analysis.

(D) Modify the gas chromatograph-thermal conductivity detector calibration procedure in Method 3C at 40 CFR part 60, appendix A–2 by using EPA Alt–045 as follows: For the initial calibration, triplicate injections of any single concentration must agree within 5 percent of their mean to be valid. The calibration response factor for a single concentration re-check must be within 10 percent of the original calibration response factor for that concentration. If this criterion is not met, repeat the initial calibration using at least three concentration levels.

(ii) The manufacturer must report the molecular weight of oxygen, carbon dioxide, methane, and nitrogen and include in the test report submitted under § 60.5420(b)(7). The manufacturer must determine moisture using Method 4 at 40 CFR part 60, appendix A–3. Traverse both ports with the Method 4 at 40 CFR part 60, appendix A–3, sampling train during each test run. The manufacturer must not introduce ambient air into the Method 3C at 40 CFR part 60, appendix A–2, integrated bag sample during the port change.

(8) The manufacturer must determine total hydrocarbons as specified by the criteria in paragraphs (d)(8)(i) through (vii) of this section.

(i) Conduct THC sampling using Method 25A at 40 CFR part 60, appendix A–7, except the option for locating the probe in the center 10 percent of the stack is not allowed. The THC probe must be traversed to 16.7 percent, 50 percent, and 83.3 percent of the stack diameter during the testing.

(ii) A valid test must consist of three Method 25A at 40 CFR part 60, appendix A–7, tests, each no less than 60 minutes in duration.

(iii) A 0–10 parts per million by volume-wet (ppmvw) (as propane) measurement range is preferred; as an alternative a 0–30 ppmvw (as carbon) measurement range may be used.

(iv) Calibration gases will be propane in air and be certified through EPA Protocol 1—''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, as amended August 25, 1999, EPA–600/R–97/121.

(v) THC measurements must be reported in terms of ppmvw as propane.

(vi) THC results must be corrected to 3 percent CO_2, as measured by Method 3C at 40 CFR part 60, appendix A–2.

(vii) Subtraction of methane/ethane from the THC data is not allowed in determining results.

(9) For each combustion control device model tested by the manufacturer under this section, you must maintain records of the information listed in paragraphs (d)(9)(i) through (vi) of this section.

(i) A full schematic of the control device and dimensions of the device components.

(ii) The design net heating value (minimum and maximum) of the device.

(iii) The test fuel gas flow range (in both mass and volume). Include the minimum and maximum allowable inlet gas flow rate.

(iv) The air/stream injection/assist ranges, if used.

(v) The test parameter ranges listed in paragraphs (d)(9)(v)(A) through (O) of this section, as applicable for the tested model.

(A) Fuel gas delivery pressure and temperature.

(B) Fuel gas moisture range.

(C) Purge gas usage range.

(D) Condensate (liquid fuel) separation range.

(E) Combustion zone temperature range. This is required for all devices that measure this parameter.

(F) Excess combustion air range.

(G) Flame arrestor(s).

(H) Burner manifold pressure.

(I) Pilot flame sensor.

(J) Pilot flame design fuel and fuel usage.

(K) Tip velocity range.

(L) Momentum flux ratio.

(M) Exit temperature range.

(N) Exit flow rate.

(O) Wind velocity and direction.

(vi) You must include all calibration quality assurance/quality control data, calibration gas values, gas cylinder certification, and strip charts annotated

with test times and calibration values in the test report.

§ 60.5415 How do I demonstrate continuous compliance with the standards for my gas well affected facility, my centrifugal compressor affected facility, my stationary reciprocating compressor affected facility, my pneumatic controller affected facility, my storage vessel affected facility, and my affected facilities at onshore natural gas processing plants?

(a) For each gas well affected facility, you must demonstrate continuous compliance by submitting the reports required by § 60.5420(b) and maintaining the records for each completion operation specified in § 60.5420(c)(1).

(b) For each centrifugal compressor affected facility, you must demonstrate continuous compliance according to paragraphs (b)(1) and (2) of this section.

(1) You must reduce VOC emissions from the wet seal fluid degassing system by 95.0 percent or greater.

(2) If you use a control device to reduce emissions, you must demonstrate continuous compliance according to paragraph (e)(2) of this section.

(3) You must submit the annual report required by 60.5420(b) and maintain the records as specified in § 60.5420(c)(2).

(c) For each reciprocating compressor affected facility, you must demonstrate continuous compliance according to paragraphs (c)(1) through (3) of this section.

(1) You must continuously monitor the number of hours of operation for each reciprocating compressor affected facility or track the number of months since initial startup, or October 15, 2012, or the date of the most recent reciprocating compressor rod packing replacement, whichever is later.

(2) You must submit the annual report as required in § 60.5420(b) and maintain records as required in § 60.5420(c)(3).

(3) You must replace the reciprocating compressor rod packing before the total number of hours of operation reaches 26,000 hours or the number of months since the most recent rod packing replacement reaches 36 months.

(d) For each pneumatic controller affected facility, you must demonstrate continuous compliance according to paragraphs (d)(1) through (3) of this section.

(1) You must continuously operate the pneumatic controllers as required in § 60.5390(a), (b), or (c).

(2) You must submit the annual report as required in § 60.5420(b).

(3) You must maintain records as required in § 60.5420(c)(4).

(e) For each storage vessel affected facility for which the VOC emissions are greater than 6 tpy, you must demonstrate continuous compliance according to paragraphs (e)(1) and (2) of this section.

(1) You must reduce VOC emissions from each storage vessel are reduced by 95.0 percent or greater.

(2) If you use a control device to reduce VOC emissions, you must demonstrate continuous compliance with the performance requirements of § 60.5412(a)(2) using the procedure specified in paragraphs (e)(2)(i) through (vii) of this section. If you use a condenser as the control device to achieve the requirements specified in § 60.5412(a)(2), you may demonstrate compliance according to paragraph (e)(2)(viii) of this section. You may switch between compliance with paragraphs (e)(2)(i) through (vii) of this section and compliance with paragraph (e)(2)(viii) of this section only after at least 1 year of operation in compliance with the selected approach. You must provide notification of such a change in the compliance method in the next Annual Report, as required in § 60.5420(b), following the change.

(i) You must operate below (or above) the site specific maximum (or minimum) parameter value established according to the requirements of § 60.5417(f)(1).

(ii) You must calculate the daily average of the applicable monitored parameter in accordance with § 60.5417(e) except that the inlet gas flow rate to the control device must not be averaged.

(iii) Compliance with the operating parameter limit is achieved when the daily average of the monitoring parameter value calculated under paragraph (e)(2)(ii) of this section is either equal to or greater than the minimum monitoring value or equal to or less than the maximum monitoring value established under paragraph (e)(2)(i) of this section. When performance testing of a combustion control device is conducted by the device manufacturer as specified in § 60.5413(d), compliance with the operating parameter limit is achieved when the inlet gas flow rate is equal to or less than the value established under § 60.5413(d)(1)(ii).

(iv) You must operate the continuous monitoring system required in § 60.5417 at all times the affected source is operating, 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, system accuracy audits and required zero and span adjustments). A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid 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.

(v) 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 to assess the operation of the control device and associated control system.

(vi) Failure to collect required data is a deviation of the monitoring requirements, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required quality monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments).

(vii) If you use a combustion control device to meet the requirements of § 60.5412(a), you must demonstrate compliance by installing a device tested under the provisions in § 60.5413(d) and complying with the criteria in paragraphs (e)(2)(vii)(A) through (D) of this section.

(A) The inlet gas flow rate must meet the range specified by the manufacturer. You must measure the flow rate as specified in § 60.5417(d)(1)(viii)(A).

(B) A pilot flame must be present at all times of operation. You must monitor the pilot flame in accordance with § 60.5417(d)(1)(viii)(B).

(C) You must operate the combustion control device with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. You must perform a visible emissions test using Method 22 at 40 CFR part 60, appendix A–7 monthly. The observation period must be 2 hours and must follow Method 22.

(D) Compliance with the operating parameter limit is achieved when the criteria in paragraphs (e)(2)(vii)(D)(*1*) through (*5*) are met.

(*1*) The inlet gas flow rate monitored under paragraph (e)(2)(vii)(A) of this section is equal to or below the maximum established by the manufacturer.

(*2*) The pilot flame is present at all times; and

(*3*) During the visible emissions test performed under paragraph (e)(2)(vii)(C) of this section, the duration of visible emissions does not exceed a total of 5 minutes during the observation period. Devices failing the visible emissions test must follow the requirements in paragraphs (e)(2)(vii)(D)(*4*) and (*5*) of this section.

(*4*) Following the first failure, you must replace the fuel nozzle(s) and burner tubes.

(*5*) If, following replacement of the fuel nozzle(s) and burner tubes as specified in paragraph (e)(2)(vii)(D)(*4*) of this section, the visible emissions test is not passed in the next scheduled test, you must either conduct a performance test as specified in § 60.5413, or replace the device with another control device whose model was tested and meets the requirements in § 60.5413(d).

(viii) If you use a condenser as the control device to achieve the percent reduction performance requirements specified in § 60.5412(a)(2), you must demonstrate compliance using the procedures in paragraphs (e)(2)(viii)(A) through (E) of this section.

(A) You must establish a site-specific condenser performance curve according to § 60.5417(f)(2).

(B) You must calculate the daily average condenser outlet temperature in accordance with § 60.5417(e).

(C) You must determine the condenser efficiency for the current operating day using the daily average condenser outlet temperature calculated under paragraph (e)(2)(viii)(B) of this section and the condenser performance curve established under paragraph (e)(2)(viii)(A) of this section.

(D) Except as provided in paragraphs (e)(2)(viii)(D)(*1*) and (*2*) of this section, at the end of each operating day, you must calculate the 365-day rolling average TOC emission reduction, as appropriate, from the condenser efficiencies as determined in paragraph (e)(2)(viii)(C) of this section.

(*1*) After the compliance dates specified in § 60.5370, if you have less than 120 days of data for determining average TOC emission reduction, you must calculate the average TOC emission reduction for the first 120 days of operation after the compliance dates. You have demonstrated compliance with the overall 95.0 percent reduction requirement if the 120-day average TOC emission reduction is equal to or greater than 95.0 percent.

(*2*) After 120 days and no more than 364 days of operation after the compliance date specified in § 60.5370, you must calculate the average TOC emission reduction as the TOC emission reduction averaged over the number of days between the current day and the applicable compliance date. You have demonstrated compliance with the overall 95.0 percent reduction requirement, if the average TOC emission reduction is equal to or greater than 95.0 percent.

(E) If you have data for 365 days or more of operation, you have demonstrated compliance with the TOC emission reduction if the rolling 365-day average TOC emission reduction calculated in paragraph (e)(2)(viii)(D) of this section is equal to or greater than 95.0 percent.

(f) For affected facilities at onshore natural gas processing plants, continuous compliance with VOC requirements is demonstrated if you are in compliance with the requirements of § 60.5400.

(g) For each sweetening unit affected facility at onshore natural gas processing plants, you must demonstrate continuous compliance with the standards for SO_2 specified in § 60.5405(b) according to paragraphs (g)(1) and (2) of this section.

(1) The minimum required SO_2 emission reduction efficiency (Z_c) is compared to the emission reduction efficiency (R) achieved by the sulfur recovery technology.

(i) If $R \geq Z_c$, your affected facility is in compliance.

(ii) If $R < Z_c$, your affected facility is not in compliance.

(2) The emission reduction efficiency (R) achieved by the sulfur reduction technology must be determined using the procedures in § 60.5406(c)(1).

(h) *Affirmative defense for violations of emission standards during malfunction.* In response to an action to enforce the standards set forth in §§ 60.5375, 60.5380, 60.5385, 60.5390, 60.5395, 60.5400, and 60.5405, 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 § 60.2. 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.

(1) To establish the affirmative defense in any action to enforce such a standard, you must timely meet the reporting requirements in § 60.5420(a), and must prove by a preponderance of evidence that:

(i) The violation:

(A) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when a violation occurred. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(iv) 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; and

(v) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) 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 violation resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(2) Report. The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator with all necessary supporting documentation, that it has met the requirements set forth in paragraph (h)(1) of this section. This affirmative defense report shall be included in the first periodic compliance, deviation report or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or

excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

§ 60.5416 What are the initial and continuous cover and closed vent system inspection and monitoring requirements for my storage vessel and centrifugal compressor affected facility?

For each closed vent system or cover at your storage vessel or centrifugal compressor affected facility, you must comply with the requirements of paragraphs (a) through (g) of this section.

(a) *Inspections.* Except as provided in paragraphs (e) and (f) of this section, you must inspect each closed vent system according to the procedures and schedule specified in paragraphs (a)(1) and (2) of this section, inspect each cover according to the procedures and schedule specified in paragraph (a)(3) of this section, and inspect each bypass device according to the procedures of paragraph (a)(4) of this section.

(1) For each closed vent system joint, seam, or other connection that is permanently or semi-permanently sealed (*e.g.,* a welded joint between two sections of hard piping or a bolted and gasketed ducting flange), you must meet the requirements specified in paragraphs (a)(1)(i) and (ii) of this section.

(i) Conduct an initial inspection according to the test methods and procedures specified in paragraph (b) of this section to demonstrate that the closed vent system operates with no detectable emissions. You must maintain records of the inspection results as specified in § 60.5420(c)(6).

(ii) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in piping; loose connections; or broken or missing caps or other closure devices. You must monitor a component or connection using the test methods and procedures in paragraph (b) of this section to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced or the connection is unsealed. You must maintain records of the inspection results as specified in § 60.5420(c)(6).

(2) For closed vent system components other than those specified in paragraph (a)(1) of this section, you must meet the requirements of paragraphs (a)(2)(i) through (iii) of this section.

(i) Conduct an initial inspection according to the test methods and procedures specified in paragraph (b) of this section to demonstrate that the closed vent system operates with no detectable emissions. You must maintain records of the inspection results as specified in § 60.5420(c)(6).

(ii) Conduct annual inspections according to the test methods and procedures specified in paragraph (b) of this section to demonstrate that the components or connections operate with no detectable emissions. You must maintain records of the inspection results as specified in § 60.5420(c)(6).

(iii) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork; loose connections; or broken or missing caps or other closure devices. You must maintain records of the inspection results as specified in § 60.5420(c)(6).

(3) For each cover, you must meet the requirements in paragraphs (a)(3)(i) and (ii) of this section.

(i) Conduct visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover, or between the cover and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the case where the storage vessel is buried partially or entirely underground, you must inspect only those portions of the cover that extend to or above the ground surface, and those connections that are on such portions of the cover (*e.g.,* fill ports, access hatches, gauge wells, etc.) and can be opened to the atmosphere.

(ii) You must initially conduct the inspections specified in paragraph (a)(3)(i) of this section following the installation of the cover. Thereafter, you must perform the inspection at least once every calendar year, except as provided in paragraphs (e) and (f) of this section. You must maintain records of the inspection results as specified in § 60.5420(c)(7).

(4) For each bypass device, except as provided for in § 60.5411, you must meet the requirements of paragraphs (a)(4)(i) or (ii) of this section.

(i) Set the flow indicator to take a reading at least once every 15 minutes at the inlet to the bypass device that could divert the steam away from the control device to the atmosphere.

(ii) If the bypass device valve installed at the inlet to the bypass device is secured in the non-diverting position using a car-seal or a lock-and-key type configuration, 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 device. You must maintain records of the inspections according to § 60.5420(c)(8).

(b) *No detectable emissions test methods and procedures.* If you are required to conduct an inspection of a closed vent system or cover at your storage vessel or centrifugal compressor affected facility as specified in paragraphs (a)(1), (2), or (3) of this section, you must meet the requirements of paragraphs (b)(1) through (13) of this section.

(1) You must conduct the no detectable emissions test procedure in accordance with Method 21 at 40 CFR part 60, appendix A–7.

(2) The detection instrument must meet the performance criteria of Method 21 at 40 CFR part 60, appendix A–7, except that the instrument response factor criteria in section 3.1.2(a) of Method 21 must be for the average composition of the fluid and not for each individual organic compound in the stream.

(3) You must calibrate the detection instrument before use on each day of its use by the procedures specified in Method 21 at 40 CFR part 60, appendix A–7.

(4) Calibration gases must be as specified in paragraphs (b)(4)(i) and (ii) of this section.

(i) Zero air (less than 10 parts per million by volume hydrocarbon in air).

(ii) A mixture of methane in air at a concentration less than 10,000 parts per million by volume.

(5) You may choose to adjust or not adjust the detection instrument readings to account for the background organic concentration level. If you choose to adjust the instrument readings for the background level, you must determine the background level value according to the procedures in Method 21 at 40 CFR part 60, appendix A–7.

(6) Your detection instrument must meet the performance criteria specified in paragraphs (b)(6)(i) and (ii) of this section.

(i) Except as provided in paragraph (b)(6)(ii) 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 3.1.2(a) of Method 21 must be for the average composition of the process fluid, not each individual volatile organic compound in the stream. For

process streams that contain nitrogen, air, or other inerts that are not organic hazardous air pollutants or volatile organic compounds, you must calculate the average stream response factor on an inert-free basis.

(ii) If no instrument is available that will meet the performance criteria specified in paragraph (b)(6)(i) of this section, you may adjust the instrument readings by multiplying by the average response factor of the process fluid, calculated on an inert-free basis, as described in paragraph (b)(6)(i) of this section.

(7) You must determine if a potential leak interface operates with no detectable emissions using the applicable procedure specified in paragraph (b)(7)(i) or (ii) of this section.

(i) If you choose not to adjust the detection instrument readings for the background organic concentration level, then you must directly compare the maximum organic concentration value measured by the detection instrument to the applicable value for the potential leak interface as specified in paragraph (b)(8) of this section.

(ii) If you choose to adjust the detection instrument readings for the background organic concentration level, you must compare the value of the arithmetic difference between the maximum organic concentration value measured by the instrument and the background organic concentration value as determined in paragraph (b)(5) of this section with the applicable value for the potential leak interface as specified in paragraph (b)(8) of this section.

(8) A potential leak interface is determined to operate with no detectable organic emissions if the organic concentration value determined in paragraph (b)(7) of this section is less than 500 parts per million by volume.

(9) *Repairs.* In the event that a leak or defect is detected, you must repair the leak or defect as soon as practicable according to the requirements of paragraphs (b)(9)(i) and (ii) of this section, except as provided in paragraph (d) of this section.

(i) A first attempt at repair must be made no later than 5 calendar days after the leak is detected.

(ii) Repair must be completed no later than 15 calendar days after the leak is detected.

(10) *Delay of repair.* Delay of repair of a closed vent system or cover for which leaks or defects have been detected is allowed if the repair is technically infeasible without a shutdown, or if you determine that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. You must complete repair of such equipment by the end of the next shutdown.

(11) *Unsafe to inspect requirements.* You may designate any parts of the closed vent system or cover as unsafe to inspect if the requirements in paragraphs (e)(1) and (2) of this section are met. Unsafe to inspect parts are exempt from the inspection requirements of paragraphs (a)(1) through (3) of this section.

(A) You determine that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraphs (a)(1), (2), or (3) of this section.

(B) You have a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(12) *Difficult to inspect requirements.* You may designate any parts of the closed vent system or cover as difficult to inspect, if the requirements in paragraphs (b)(12)(i) and (ii) of this section are met. Difficult to inspect parts are exempt from the inspection requirements of paragraphs (a)(1) through (3) of this section.

(i) You determine that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface.

(ii) You have a written plan that requires inspection of the equipment at least once every 5 years.

(13) *Records.* Records shall be maintained as specified in this section and in § 60.5420(c)(9).

§ 60.5417 What are the continuous control device monitoring requirements for my storage vessel or centrifugal compressor affected facility?

You must meet the applicable requirements of this section to demonstrate continuous compliance for each control device used to meet emission standards for your storage vessel or centrifugal compressor affected facility.

(a) You must install and operate a continuous parameter monitoring system for each control device as specified in paragraphs (c) through (j) of this section, except as provided for in paragraph (b) of this section. If you install and operate a flare in accordance with § 60.5412(a)(3), you are exempt from the requirements of paragraphs (e) and (f) of this section.

(b) You are exempt from the monitoring requirements specified in paragraphs (c) through (j) of this section for the control devices listed in paragraphs (b)(1) and (2) of this section.

(1) A boiler or process heater in which all vent streams are introduced with the primary fuel or is used as the primary fuel.

(2) A boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(c) You must design and operate the continuous monitoring system so that a determination can be made on whether the control device is achieving the applicable performance requirements of § 60.5412. For each continuous parameter monitoring system, you must meet the specifications and requirements in paragraphs (c)(1) through (4) of this section.

(1) Each continuous parameter monitoring system must measure data values at least once every hour and record the parameters in paragraphs (c)(1)(i) or (ii) of this section.

(i) Each measured data value.

(ii) Each block average value for each 1-hour period or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values.

(2) You must prepare a site-specific monitoring plan that addresses the monitoring system design, data collection, and the quality assurance and quality control elements outlined in paragraphs (c)(2)(i) through (v) of this section. You must install, calibrate, operate, and maintain each continuous parameter monitoring system in accordance with the procedures in your approved 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, system accuracy audits, or other audit procedures.

(iv) Ongoing operation and maintenance procedures in accordance with provisions in § 60.13(b).

(v) Ongoing reporting and recordkeeping procedures in accordance with provisions in § 60.7(c), (d), and (f).

(3) You must conduct the continuous parameter monitoring system equipment performance checks, system accuracy audits, or other audit procedures specified in the site-specific monitoring plan at least once every 12 months.

(4) You must conduct a performance evaluation of each continuous parameter monitoring system in

accordance with the site-specific monitoring plan.

(d) You must install, calibrate, operate, and maintain a device equipped with a continuous recorder to measure the values of operating parameters appropriate for the control device as specified in either paragraph (d)(1), (2), or (3) of this section.

(1) A continuous monitoring system that measures the operating parameters in paragraphs (d)(1)(i) through (viii) of this section, as applicable.

(i) For a thermal vapor incinerator that demonstrates during the performance test conducted under § 60.5413 that combustion zone temperature is an accurate indicator of performance, a temperature monitoring device equipped with a continuous recorder. The monitoring device must have a minimum accuracy of ±1 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. You must install the temperature sensor at a location representative of the combustion zone temperature.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature at two locations and have a minimum accuracy of ±1 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. You must install one temperature sensor in the vent stream at the nearest feasible point to the catalyst bed inlet, and you must install a second temperature sensor in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device must have a minimum accuracy of ±1 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. You must install the temperature sensor at a location representative of the combustion zone temperature.

(v) For a condenser, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device must have a minimum accuracy of ±1 percent of the temperature being monitored in °C, or ±2.8 °C, whichever value is greater. You must install the temperature sensor at a location in the exhaust vent stream from the condenser.

(vi) For a regenerative-type carbon adsorption system, a continuous monitoring system that meets the specifications in paragraphs (d)(1)(vi)(A) and (B) of this section.

(A) The continuous parameter monitoring system must measure and record the average total regeneration stream mass flow or volumetric flow during each carbon bed regeneration cycle. The flow sensor must have a measurement sensitivity of 5 percent of the flow rate or 10 cubic feet per minute, whichever is greater. You must check the mechanical connections for leakage at least every month, and you must perform a visual inspection at least every 3 months of all components of the flow continuous parameter monitoring system for physical and operational integrity and all electrical connections for oxidation and galvanic corrosion if your flow continuous parameter monitoring system is not equipped with a redundant flow sensor; and

(B) The continuous parameter monitoring system must measure and record the average carbon bed temperature for the duration of the carbon bed steaming cycle and measure the actual carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle. The temperature monitoring device must have a minimum accuracy of ±1 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater.

(vii) For a nonregenerative-type carbon adsorption system, you must monitor the design carbon replacement interval established using a performance test performed as specified in § 60.5413(b). The design carbon replacement interval must be based on the total carbon working capacity of the control device and source operating schedule.

(viii) For a combustion control device whose model is tested under § 60.5413(d), a continuous monitoring system meeting the requirements of paragraphs (d)(1)(viii)(A) and (B) of this section.

(A) The continuous monitoring system must measure gas flow rate at the inlet to the control device. The monitoring instrument must have an accuracy of ±2 percent or better.

(B) A heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(2) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder. The monitor must meet the requirements of Performance Specification 8 or 9 of 40 CFR part 60, appendix B. You must install, calibrate, and maintain the monitor according to the manufacturer's specifications.

(3) A continuous monitoring system that measures operating parameters other than those specified in paragraph (d)(1) or (2) of this section, upon approval of the Administrator as specified in § 60.13(i).

(e) You must calculate the daily average value for each monitored operating parameter for each operating day, using the data recorded by the monitoring system, except for inlet gas flow rate. If the emissions unit operation is continuous, the operating day is a 24-hour period. If the emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

(f) For each operating parameter monitor installed in accordance with the requirements of paragraph (d) of this section, you must comply with paragraph (f)(1) of this section for all control devices. When condensers are installed, you must also comply with paragraph (f)(2) of this section.

(1) You must establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 60.5412(a). You must establish each minimum or maximum operating parameter value as specified in paragraphs (f)(1)(i) through (iii) of this section.

(i) If you conduct performance tests in accordance with the requirements of § 60.5413(b) to demonstrate that the control device achieves the applicable performance requirements specified in § 60.5412(a), then you must establish the minimum operating parameter value or the maximum operating parameter value based on values measured during the performance test and supplemented, as necessary, by a condenser design analysis or control device manufacturer recommendations or a combination of both.

(ii) If you use a condenser design analysis in accordance with the requirements of § 60.5413(c) to demonstrate that the control device achieves the applicable performance requirements specified in § 60.5412(a), then you must establish the minimum

operating parameter value or the maximum operating parameter value based on the condenser design analysis and supplemented, as necessary, by the condenser manufacturer's recommendations.

(iii) If you operate a control device where the performance test requirement was met under § 60.5413(d) to demonstrate that the control device achieves the applicable performance requirements specified in § 60.5412(a), then you must establish the maximum inlet gas flow rate based on the performance test and supplemented, as necessary, by the manufacturer recommendations.

(2) If you use a condenser as specified in paragraph (d)(1)(v) of this section, you must establish a condenser performance curve showing the relationship between condenser outlet temperature and condenser control efficiency, according to the requirements of paragraphs (f)(2)(i) and (ii) of this section.

(i) If you conduct a performance test in accordance with the requirements of § 60.5413(b) to demonstrate that the condenser achieves the applicable performance requirements in § 60.5412(a), then the condenser performance curve must be based on values measured during the performance test and supplemented as necessary by control device design analysis, or control device manufacturer's recommendations, or a combination or both.

(ii) If you use a control device design analysis in accordance with the requirements of § 60.5413(c)(1) to demonstrate that the condenser achieves the applicable performance requirements specified in § 60.5412(a), then the condenser performance curve must be based on the condenser design analysis and supplemented, as necessary, by the control device manufacturer's recommendations.

(g) A deviation for a given control device is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (g)(1) through (g)(6) of this section being met. If you monitor multiple operating parameters for the same control device during the same operating day and more than one of these operating parameters meets a deviation criterion specified in paragraphs (g)(1) through (6) of this section, then a single excursion is determined to have occurred for the control device for that operating day.

(1) A deviation occurs when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit) established in paragraph (f)(1) of this section.

(2) If you meet § 60.5412(a)(2), a deviation occurs when the 365-day average condenser efficiency calculated according to the requirements specified in § 60.5415(e)(8)(iv) is less than 95.0 percent.

(3) If you meet § 60.5412(a)(2) and you have less than 365 days of data, a deviation occurs when the average condenser efficiency calculated according to the procedures specified in § 60.5415(e)(8)(iv)(A) or (B) is less than 90.0 percent.

(4) A deviation occurs when the monitoring data are not available for at least 75 percent of the operating hours in a day.

(5) If the closed vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, a deviation occurs when the requirements of paragraphs (g)(5)(i) and (ii) of this section are met.

(i) For each bypass line subject to § 60.5411(a)(3)(i)(A), the flow indicator indicates that flow has been detected and that the stream has been diverted away from the control device to the atmosphere.

(ii) For each bypass line subject to § 60.5411(a)(3)(i)(B), if the seal or closure mechanism has been broken, the bypass line valve position has changed, the key for the lock-and-key type lock has been checked out, or the car-seal has broken.

(6) For a combustion control device whose model is tested under § 60.5413(d), a deviation occurs when the conditions of paragraphs (g)(6)(i) or (ii) are met.

(i) The inlet gas flow rate exceeds the maximum established during the test conducted under § 60.5413(d).

(ii) Failure of the monthly visible emissions test conducted under § 60.5415(e)(7)(iii) occurs.

§ 60.5420 What are my notification, reporting, and recordkeeping requirements?

(a) You must submit the notifications required in § 60.7(a)(1) and (4), and according to paragraphs (a)(1) and (2) of this section, if you own or operate one or more of the affected facilities specified in § 60.5365 that was constructed, modified, or reconstructed during the reporting period.

(1) If you own or operate a gas well, pneumatic controller or storage vessel affected facility you are not required to submit the notifications required in § 60.7(a)(1), (3), and (4).

(2)(i) If you own or operate a gas well affected facility, you must submit a notification to the Administrator no later than 2 days prior to the commencement of each well completion operation listing the anticipated date of the well completion operation. The notification shall include contact information for the owner or operator; the API well number, the latitude and longitude coordinates for each well in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983; and the planned date of the beginning of flowback. You may submit the notification in writing or in electronic format.

(ii) If you are subject to state regulations that require advance notification of well completions and you have met those notification requirements, then you are considered to have met the advance notification requirements of paragraph (a)(2)(i) of this section.

(b) *Reporting requirements.* You must submit annual reports containing the information specified in paragraphs (b)(1) through (6) of this section to the Administrator and performance test reports as specified in paragraph (b)(7) of this section. The initial annual report is due 30 days after the end of the initial compliance period as determined according to § 60.5410. Subsequent annual reports are due on the same date each year as the initial annual report. If you own or operate more than one affected facility, you may submit one report for multiple affected facilities provided the report contains all of the information required as specified in paragraphs (b)(1) through (6) of this section. Annual reports may coincide with title V reports as long as all the required elements of the annual report are included. You may arrange with the Administrator a common schedule on which reports required by this part may be submitted as long as the schedule does not extend the reporting period.

(1) The general information specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) The company name and address of the affected facility.

(ii) An identification of each affected facility being included in the annual report.

(iii) Beginning and ending dates of the reporting period.

(iv) A certification by a responsible official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(2) For each gas well affected facility, the information in paragraphs (b)(2)(i) through (ii) of this section.

(i) Records of each well completion operation as specified in paragraph (c)(1)(i) through (iv) of this section for each gas well affected facility conducted during the reporting period. In lieu of submitting the records specified in paragraph (c)(1)(i) through (iv), the owner or operator may submit a list of the well completions with hydraulic fracturing completed during the reporting period and the records required by paragraph (c)(1)(v) of this section for each well completion.

(ii) Records of deviations specified in paragraph (c)(1)(ii) of this section that occurred during the reporting period.

(3) For each centrifugal compressor affected facility, the information specified in paragraphs (b)(3)(i) and (ii) of this section.

(i) An identification of each centrifugal compressor using a wet seal system constructed, modified or reconstructed during the reporting period.

(ii) Records of deviations specified in paragraph (c)(2) of this section that occurred during the reporting period.

(iii) If required to comply with § 60.5380(a)(1), the records of closed vent system and cover inspections specified in paragraph (c)(6) of this section.

(4) For each reciprocating compressor affected facility, the information specified in paragraphs (b)(4)(i) through (ii) of this section.

(i) The cumulative number of hours or operation or the number of months since initial startup, October 15, 2012, or since the previous reciprocating compressor rod packing replacement, whichever is later.

(ii) Records of deviations specified in paragraph (c)(3)(iii) of this section that occurred during the reporting period.

(5) For each pneumatic controller affected facility, the information specified in paragraphs (b)(5)(i) through (v) of this section.

(i) An identification of each pneumatic controller constructed, modified or reconstructed during the reporting period, including the identification information specified in § 60.5390(c)(2).

(ii) If applicable, documentation that the use of pneumatic controller affected facilities with a natural gas bleed rate greater than 6 standard cubic feet per hour are required and the reasons why.

(iii) Records of deviations specified in paragraph (c)(4)(v) of this section that occurred during the reporting period.

(6) For each storage vessel affected facility, the information in paragraphs (b)(6)(i) through (iii) of this section.

(i) An identification of each storage vessel with VOC emissions greater than 6 tpy constructed, modified or reconstructed during the reporting period.

(ii) Documentation that the VOC emission rate is less than 6 tpy for meeting the requirements in § 60.5395(a).

(iii) Records of deviations specified in paragraph (c)(5)(iii) of this section that occurred during the reporting period.

(7)(i) Within 60 days after the date of completing each performance test (see § 60.8 of this part) as required by this subpart you must submit the results of the performance tests required by this subpart to EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through EPA's Central Data Exchange (CDX) (*www.epa.gov/cdx*). Performance test data must be submitted in the file format generated through use of EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods on the ERT Web site are subject to this requirement for submitting reports 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 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 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) All reports required by this subpart not subject to the requirements in paragraph (a)(2)(i) of this section must be sent to the Administrator at the appropriate address listed in § 63.13 of this part. The Administrator or the delegated authority may request a report in any form suitable for the specific case (*e.g.,* by commonly used electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to paragraph (a)(2)(i) and (ii) of this section in paper format.

(c) *Recordkeeping requirements.* You must maintain the records identified as specified in § 60.7(f) and in paragraphs (c)(1) through (10) of this section. All records must be maintained for at least 5 years.

(1) The records for each gas well affected facility as specified in paragraphs (c)(1)(i) through (v) of this section.

(i) Records identifying each well completion operation for each gas well affected facility;

(ii) Records of deviations in cases where well completion operations with hydraulic fracturing were not performed in compliance with the requirements specified in § 60.5375.

(iii) Records required in § 60.5375(b) or (f) for each well completion operation conducted for each gas well affected facility that occurred during the reporting period. You must maintain the records specified in paragraphs (c)(1)(iii)(A) and (B) of this section.

(A) For each gas well affected facility required to comply with the requirements of § 60.5375(a), you must record: The location of the well; the API well number; the duration of flowback; duration of recovery to the flow line; duration of combustion; duration of venting; and specific reasons for venting in lieu of capture or combustion. The duration must be specified in hours of time.

(B) For each gas well affected facility required to comply with the requirements of § 60.5375(f), you must maintain the records specified in paragraph (c)(1)(iii)(A) of this section except that you do not have to record the duration of recovery to the flow line.

(iv) For each gas well facility for which you claim an exception under § 60.5375(a)(3), you must record: The location of the well; the API well number; the specific exception claimed; the starting date and ending date for the period the well operated under the exception; and an explanation of why the well meets the claimed exception.

(v) For each gas well affected facility required to comply with both § 60.5375(a)(1) and (3), records of the digital photograph as specified in § 60.5410(a)(4).

(2) For each centrifugal compressor affected facility, you must maintain records of deviations in cases where the centrifugal compressor was not operated in compliance with the requirements specified in § 60.5380.

(3) For each reciprocating compressors affected facility, you must maintain the records in paragraphs (c)(3)(i) through (iii) of this section.

(i) Records of the cumulative number of hours of operation or number of months since initial startup or October 15, 2012, or the previous replacement of the reciprocating compressor rod packing, whichever is later.

(ii) Records of the date and time of each reciprocating compressor rod packing replacement.

(iii) Records of deviations in cases where the reciprocating compressor was not operated in compliance with the requirements specified in § 60.5385.

(4) For each pneumatic controller affected facility, you must maintain the records identified in paragraphs (c)(4)(i) through (v) of this section.

(i) Records of the date, location and manufacturer specifications for each pneumatic controller constructed, modified or reconstructed.

(ii) Records of the demonstration that the use of pneumatic controller affected facilities with a natural gas bleed rate greater than 6 standard cubic feet per hour are required and the reasons why.

(iii) If the pneumatic controller is not located at a natural gas processing plant, records of the manufacturer's specifications indicating that the controller is designed such that natural gas bleed rate is less than or equal to 6 standard cubic feet per hour.

(iv) If the pneumatic controller is located at a natural gas processing plant, records of the documentation that the natural gas bleed rate is zero.

(v) Records of deviations in cases where the pneumatic controller was not operated in compliance with the requirements specified in § 60.5390.

(5) For each storage vessel affected facility, you must maintain the records identified in paragraphs (c)(5)(i) through (iv) of this section.

(i) If required to reduce emissions by complying with § 60.5395, the records specified in § 60.5416 of this subpart.

(ii) Records of the determination that the VOC emission rate is less than 6 tpy per storage vessel for the exemption under § 60.5395(a), including identification of the model or calculation methodology used to calculate the VOC emission rate.

(iii) Records of deviations in cases where the storage vessel was not operated in compliance with the requirements specified in §§ 60.5395, 60.5411, 60.5412, and 60.5413.

(iv) For vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), records indicating the number of consecutive days that the vessel is located at a site in the oil and natural gas production segment, natural gas processing segment or natural gas transmission and storage segment. If a vessel is removed from a site and, within 30 days, is either returned to or replaced by another vessel at the site to serve the same or similar function, then the entire period since the original vessel was first located at the site, including the days when the storage vessel was removed, will be added to the count towards the number of consecutive days.

(6) For each storage vessel or centrifugal compressor subject to the closed vent system inspection requirements of § 60.5416(a)(1) and (2), records of each inspection.

(7) For each storage vessel or centrifugal compressor subject to the cover requirements of § 60.5416(a)(3), a record of each inspection.

(8) For each storage vessel or centrifugal compressor subject to the bypass requirements of § 60.5416(a)(4), a record of each inspection or a record each time the key is checked out or a record of each time the alarm is sounded.

(9) For each closed vent system used to comply with this subpart that must operate with no detectable emissions, a record of the monitoring conducted in accordance with § 60.5416(b)(13).

(10) Records of the schedule for carbon replacement (as determined by the design analysis requirements of § 60.5413(c)(2) or (3)) and records of each carbon replacement as specified in § 60.5412(c)(1).

(11) For each storage vessel or centrifugal compressor subject to the control device requirements of § 60.5412, records of minimum and maximum operating parameter values, continuous parameter monitoring system data, calculated averages of continuous parameter monitoring system data, results of all compliance calculations, and results of all inspections.

§ 60.5421 What are my additional recordkeeping requirements for my affected facility subject to VOC requirements for onshore natural gas processing plants?

(a) You must comply with the requirements of paragraph (b) of this section in addition to the requirements of § 60.486a.

(b) The following recordkeeping requirements apply to pressure relief devices subject to the requirements of § 60.5401(b)(1) of this subpart.

(1) When each leak is detected as specified in § 60.5401(b)(2), a weatherproof and readily visible identification, marked with the equipment identification number, must be attached to the leaking equipment. The identification on the pressure relief device may be removed after it has been repaired.

(2) When each leak is detected as specified in § 60.5401(b)(2), the following information must be recorded in a log and shall be kept for 2 years in a readily accessible location:

(i) The instrument and operator identification numbers and the equipment identification number.

(ii) The date the leak was detected and the dates of each attempt to repair the leak.

(iii) Repair methods applied in each attempt to repair the leak.

(iv) ''Above 500 ppm'' if the maximum instrument reading measured by the methods specified in paragraph (a) of this section after each repair attempt is 500 ppm or greater.

(v) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(vi) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a process shutdown.

(vii) The expected date of successful repair of the leak if a leak is not repaired within 15 days.

(viii) Dates of process unit shutdowns that occur while the equipment is unrepaired.

(ix) The date of successful repair of the leak.

(x) A list of identification numbers for equipment that are designated for no detectable emissions under the provisions of § 60.482–4a(a). The designation of equipment subject to the provisions of § 60.482–4a(a) must be signed by the owner or operator.

§ 60.5422 What are my additional reporting requirements for my affected facility subject to VOC requirements for onshore natural gas processing plants?

(a) You must comply with the requirements of paragraphs (b) and (c) of this section in addition to the requirements of § 60.487a(a), (b), (c)(2)(i) through (iv), and (c)(2)(vii) through (viii).

(b) An owner or operator must include the following information in the initial semiannual report in addition to the information required in § 60.487a(b)(1) through (4): Number of pressure relief devices subject to the requirements of § 60.5401(b) except for those pressure relief devices designated for no detectable emissions under the provisions of § 60.482–4a(a) and those pressure relief devices complying with § 60.482–4a(c).

(c) An owner or operator must include the following information in all semiannual reports in addition to the information required in § 60.487a(c)(2)(i) through (vi):

(1) Number of pressure relief devices for which leaks were detected as required in § 60.5401(b)(2); and

(2) Number of pressure relief devices for which leaks were not repaired as required in § 60.5401(b)(3).

§ 60.5423 What additional recordkeeping and reporting requirements apply to my sweetening unit affected facilities at onshore natural gas processing plants?

(a) You must retain records of the calculations and measurements required in § 60.5405(a) and (b) and § 60.5407(a) through (g) for at least 2 years following the date of the measurements. This requirement is included under § 60.7(d) of the General Provisions.

(b) You must submit a report of excess emissions to the Administrator in your annual report if you had excess emissions during the reporting period. For the purpose of these reports, excess emissions are defined as:

(1) Any 24-hour period (at consistent intervals) during which the average sulfur emission reduction efficiency (R) is less than the minimum required efficiency (Z).

(2) For any affected facility electing to comply with the provisions of § 60.5407(b)(2), any 24-hour period during which the average temperature of the gases leaving the combustion zone of an incinerator is less than the appropriate operating temperature as determined during the most recent performance test in accordance with the provisions of § 60.5407(b)(2). Each 24-hour period must consist of at least 96 temperature measurements equally spaced over the 24 hours.

(c) To certify that a facility is exempt from the control requirements of these standards, for each facility with a design capacity less that 2 LT/D of H_2S in the acid gas (expressed as sulfur) you must keep, for the life of the facility, an analysis demonstrating that the facility's design capacity is less than 2 LT/D of H_2S expressed as sulfur.

(d) If you elect to comply with § 60.5407(e) you must keep, for the life of the facility, a record demonstrating that the facility's design capacity is less than 150 LT/D of H_2S expressed as sulfur.

(e) The requirements of paragraph (b) of this section remain in force until and unless the EPA, in delegating enforcement authority to a state under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such state. In that event, affected sources within the state will be relieved of obligation to comply with paragraph (b) of this section, provided that they comply with the requirements established by the state.

§ 60.5425 What part of the General Provisions apply to me?

Table 3 to this subpart shows which parts of the General Provisions in §§ 60.1 through 60.19 apply to you.

§ 60.5430 What definitions apply to this subpart?

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in subpart A or subpart VVa of part 60; and the following terms shall have the specific meanings given them.

Acid gas means a gas stream of hydrogen sulfide (H_2S) and carbon dioxide (CO_2) that has been separated from sour natural gas by a sweetening unit.

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.

Alaskan North Slope means the approximately 69,000 square-mile area extending from the Brooks Range to the Arctic Ocean.

API Gravity means the weight per unit volume of hydrocarbon liquids as measured by a system recommended by the American Petroleum Institute (API) and is expressed in degrees.

Bleed rate means the rate in standard cubic feet per hour at which natural gas is continuously vented (bleeds) from a pneumatic controller.

Centrifugal compressor means any machine for raising the pressure of a natural gas by drawing in low pressure natural gas and discharging significantly higher pressure natural gas by means of mechanical rotating vanes or impellers. Screw, sliding vane, and liquid ring compressors are not centrifugal compressors for the purposes of this subpart.

City gate means the delivery point at which natural gas is transferred from a transmission pipeline to the local gas utility.

Completion combustion device means any ignition device, installed horizontally or vertically, used in exploration and production operations to combust otherwise vented emissions from completions.

Compressor station means any permanent combination of one or more compressors that move natural gas at increased pressure from fields, in transmission pipelines, or into storage.

Continuous bleed means a continuous flow of pneumatic supply natural gas to the process control device (*e.g.,* level control, temperature control, pressure control) where the supply gas pressure is modulated by the process condition, and then flows to the valve controller where the signal is compared with the process set-point to adjust gas pressure in the valve actuator.

Custody transfer means the transfer of natural gas after processing and/or treatment in the producing operations, or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation.

Dehydrator means a device in which an absorbent directly contacts a natural gas stream and absorbs water in a contact tower or absorption column (absorber).

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) 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) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Delineation well means a well drilled in order to determine the boundary of a field or producing reservoir.

Equipment means each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart.

Field gas means feedstock gas entering the natural gas processing plant.

Field gas gathering means the system used transport field gas from a field to the main pipeline in the area.

Flare means a thermal oxidation system using an open (without enclosure) flame. Completion combustion devices as defined in this section are not considered flares.

Flow line means a pipeline used to transport oil and/or gas from the well to a processing facility, a mainline pipeline, re-injection, or other useful purpose.

Flowback means the process of allowing fluids to flow from a natural

gas well following a treatment, either in preparation for a subsequent phase of treatment or in preparation for cleanup and returning the well to production. The flowback period begins when material introduced into the well during the treatment returns to the surface immediately following hydraulic fracturing or refracturing. The flowback period ends with either well shut in or when the well is producing continuously to the flow line or to a storage vessel for collection, whichever occurs first.

Gas processing plant process unit means equipment assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the products.

Gas well or natural gas well means an onshore well drilled principally for production of natural gas.

Hydraulic fracturing or refracturing means the process of directing pressurized fluids containing any combination of water, proppant, and any added chemicals to penetrate tight formations, such as shale or coal formations, that subsequently require high rate, extended flowback to expel fracture fluids and solids during completions.

Hydraulic refracturing means conducting a subsequent hydraulic fracturing operation at a well that has previously undergone a hydraulic fracturing operation.

In light liquid service means that the piece of equipment contains a liquid that meets the conditions specified in § 60.485a(e) or § 60.5401(g)(2) of this part.

In wet gas service means that a compressor or piece of equipment contains or contacts the field gas before the extraction step at a gas processing plant process unit.

Intermittent/snap-action pneumatic controller means a pneumatic controller that vents non-continuously.

Liquefied natural gas unit means a unit used to cool natural gas to the point at which it is condensed into a liquid which is colorless, odorless, non-corrosive and non-toxic.

Low pressure gas well means a well with reservoir pressure and vertical well depth such that 0.445 times the reservoir pressure (in psia) minus 0.038 times the vertical well depth (in feet) minus 67.578 psia is less than the flow line pressure at the sales meter.

Natural gas-driven pneumatic controller means a pneumatic controller powered by pressurized natural gas.

Natural gas liquids means the hydrocarbons, such as ethane, propane, butane, and pentane that are extracted from field gas.

Natural gas processing plant (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

Natural gas transmission means the pipelines used for the long distance transport of natural gas (excluding processing). Specific equipment used in natural gas transmission includes the land, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors, and their driving units and appurtenances, and equipment used for transporting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas to one or more distribution area(s).

Nonfractionating plant means any gas plant that does not fractionate mixed natural gas liquids into natural gas products.

Non-natural gas-driven pneumatic controller means an instrument that is actuated using other sources of power than pressurized natural gas; examples include solar, electric, and instrument air.

Onshore means all facilities except those that are located in the territorial seas or on the outer continental shelf.

Pneumatic controller means an automated instrument used for maintaining a process condition such as liquid level, pressure, delta-pressure and temperature.

Pressure vessel means a storage 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 unit means components assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the products.

Reciprocating compressor means a piece of equipment that increases the pressure of a process gas by positive displacement, employing linear movement of the driveshaft.

Reciprocating compressor rod packing means a series of flexible rings in machined metal cups that fit around the reciprocating compressor piston rod to create a seal limiting the amount of compressed natural gas that escapes to the atmosphere.

Reduced emissions completion means a well completion following fracturing or refracturing where gas flowback that is otherwise vented is captured, cleaned, and routed to the flow line or collection system, re-injected into the well or another well, used as an on-site fuel source, or used for other useful purpose that a purchased fuel or raw material would serve, with no direct release to the atmosphere.

Reduced sulfur compounds means H_2S, carbonyl sulfide (COS), and carbon disulfide (CS_2).

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (*e.g.,* a Regional Administrator of EPA); or

(4) For affected facilities:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; or

(ii) The designated representative for any other purposes under part 60.

Routed to a process or route to a process means the emissions are conveyed via a closed vent system to any enclosed portion of a process unit where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and/or recovered.

Salable quality gas means natural gas that meets the composition, moisture, or other limits set by the purchaser of the natural gas, regardless of whether such gas is sold.

Storage vessel means a unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provides structural support and is designed to contain an accumulation of liquids or other materials. The following are not considered storage vessels:

(1) Vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), and are intended to be located at a site for less than 180 consecutive days. If you do not keep or are not able to produce records, as required by § 60.5420(c)(5)(iv), showing that the vessel has been located at a site for less than 180 consecutive days, the vessel described herein is considered to be a storage vessel since the original vessel was first located at the site.

(2) Process vessels such as surge control vessels, bottoms receivers or knockout vessels.

(3) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere.

Sulfur production rate means the rate of liquid sulfur accumulation from the sulfur recovery unit.

Sulfur recovery unit means a process device that recovers element sulfur from acid gas.

Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

Sweetening unit means a process device that removes hydrogen sulfide and/or carbon dioxide from the sour natural gas stream.

Total Reduced Sulfur (TRS) means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide as measured by Method 16 of appendix A to part 60 of this chapter.

Total SO2 equivalents means the sum of volumetric or mass concentrations of the sulfur compounds obtained by adding the quantity existing as SO_2 to the quantity of SO_2 that would be obtained if all reduced sulfur compounds were converted to SO_2 (ppmv or kg/dscm (lb/dscf)).

Underground storage vessel means a storage vessel stored below ground.

Well means an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected.

Well completion means the process that allows for the flowback of petroleum or natural gas from newly drilled wells to expel drilling and reservoir fluids and tests the reservoir flow characteristics, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

Well completion operation means any well completion with hydraulic fracturing or refracturing occurring at a gas well affected facility.

Well site means one or more areas that are directly disturbed during the drilling and subsequent operation of, or affected by, production facilities directly associated with any oil well, gas well, or injection well and its associated well pad.

Wellhead means the piping, casing, tubing and connected valves protruding above the earth's surface for an oil and/or natural gas well. The wellhead ends where the flow line connects to a wellhead valve. The wellhead does not include other equipment at the well site except for any conveyance through which gas is vented to the atmosphere.

Wildcat well means a well outside known fields or the first well drilled in an oil or gas field where no other oil and gas production exists.

TABLE 1 TO SUBPART OOOO OF PART 60—REQUIRED MINIMUM INITIAL SO_2 EMISSION REDUCTION EFFICIENCY (Z_i)

H_2S content of acid gas (Y), %	Sulfur feed rate (X), LT/D			
	$2.0 \leq X \leq 5.0$	$5.0 < X \leq 15.0$	$15.0 < X \leq 300.0$	$X > 300.0$
$Y \geq 50$	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 99.9, whichever is smaller.		
$20 \leq Y < 50$	79.0	$88.5X^{0.0101}Y^{0.0125}$ or 97.9, whichever is smaller.		97.9
$10 \leq Y < 20$	79.0	$88.5X^{0.0101}Y^{0.0125}$ or 97.9, whichever is smaller.	93.5	93.5
$Y < 10$	79.0	79.0	79.0	79.0

TABLE 2 TO SUBPART OOOO OF PART 60—REQUIRED MINIMUM SO_2 EMISSION REDUCTION EFFICIENCY (Z_c)

H_2S content of acid gas (Y), %	Sulfur feed rate (X), LT/D			
	$2.0 \leq X \leq 5.0$	$5.0 < X \leq 15.0$	$15.0 < X \leq 300.0$	$X > 300.0$
$Y \geq 50$	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 99.9, whichever is smaller.		
$20 \leq Y < 50$	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 97.9, whichever is smaller.		97.5
$10 \leq Y < 20$	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 90.8, whichever is smaller.		90.8
$Y < 10$	74.0	74.0	74.0	74.0

E = The sulfur emission rate expressed as elemental sulfur, kilograms per hour (kg/hr) [pounds per hour (lb/hr)], rounded to one decimal place.
R = The sulfur emission reduction efficiency achieved in percent, carried to one decimal place.
S = The sulfur production rate, kilograms per hour (kg/hr) [pounds per hour (lb/hr)], rounded to one decimal place.

X = The sulfur feed rate from the sweetening unit (*i.e.,* the H_2S in the acid gas), expressed as sulfur, Mg/D(LT/D), rounded to one decimal place.

Y = The sulfur content of the acid gas from the sweetening unit, expressed as mole percent H_2S (dry basis) rounded to one decimal place.

Z = The minimum required sulfur dioxide (SO_2) emission reduction efficiency, expressed as percent carried to one decimal place. Z_i refers to the reduction efficiency required at the initial performance test. Z_c refers to the reduction efficiency required on a continuous basis after compliance with Z_i has been demonstrated.

As stated in § 60.5425, you must comply with the following applicable General Provisions:

TABLE 3 TO SUBPART OOOO OF PART 60—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO

General provisions citation	Subject of citation	Applies to subpart?	Explanation
§ 60.1	General applicability of the General Provisions	Yes.	
§ 60.2	Definitions	Yes	Additional terms defined in § 60.5430.
§ 60.3	Units and abbreviations	Yes.	
§ 60.4	Address	Yes.	
§ 60.5	Determination of construction or modification	Yes.	
§ 60.6	Review of plans	Yes.	
§ 60.7	Notification and record keeping	Yes	Except that § 60.7 only applies as specified in § 60.5420(a).
§ 60.8	Performance tests	Yes	Performance testing is required for control devices used on storage vessels and centrifugal compressors.
§ 60.9	Availability of information	Yes.	
§ 60.10	State authority	Yes.	
§ 60.11	Compliance with standards and maintenance requirements.	No	Requirements are specified in subpart OOOO.
§ 60.12	Circumvention	Yes.	
§ 60.13	Monitoring requirements	Yes	Continuous monitors are required for storage vessels.
§ 60.14	Modification	Yes.	
§ 60.15	Reconstruction	Yes.	
§ 60.16	Priority list	Yes.	
§ 60.17	Incorporations by reference	Yes.	
§ 60.18	General control device requirements	Yes	Except that § 60.18 does not apply to flares.
§ 60.19	General notification and reporting requirement	Yes.	

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 8. The authority citation for part 63 continues to read as follows:

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

■ 9. Section 63.14 is amended by:

■ a. Revising paragraphs (b) introductory text, (b)(28), and (b)(64);

■ b. Adding paragraphs (b)(73), (74), and (75); and

■ c. Revising paragraphs (i) introductory text and (i)(1) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959, Telephone (610) 832–9585, and are also available at the following Web site: *http://www.astm.org*; or ProQuest, 789 East Eisenhower Parkway, Ann Arbor, MI 48106–1346, Telephone (734) 761–4700, and are also available at the following Web site: *http://www.proquest.com.*

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(28) ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (Approved October 1, 2004), IBR approved for §§ 60.485(g), 60.485a(g), 63.772(a), 63.772(e), 63.1282(a), 63.1282(d), 63.2351(b), 63.2354(b) and table 8 to subpart HHHHHHH of this part.

* * * * *

(64) ASTM D6522–00 (Reapproved 2005), Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, approved October 1, 2005, IBR approved for table 4 to subpart ZZZZ of this part, table 5 to subpart DDDDD of this part, table 4 to subpart JJJJJJ of this part and §§ 63.772(e), 63.772(h), 63.1282(d) and 63.1282(g).

* * * * *

(73) ASTM D1945–03 (Reapproved 2010) Standard Test Method for Analysis of Natural Gas by Gas Chromatography (Approved January 1, 2010), IBR approved for §§ 63.772(h) and 63.1282(g).

(74) ASTM D3588–98 (Reapproved 2003) Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels (Approved May 10, 2003), IBR approved for §§ 63.772(h) and 63.1282(g).

(75) ASTM D4891–89 (Reapproved 2006) Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion (Approved June 1, 2006), IBR approved for §§ 63.772(h) and 63.1282(g).

* * * * *

(i) The following material is available for purchase from at least one of the following addresses: American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–

5990, Telephone (800) 843–2763, and are also available at the following Web site: *http://www.asme.org*; or HIS, Incorporated, 15 Inverness Way East, Englewood, CO 80112, Telephone (877) 413–5184, and are also available at the following Web site: *http://global.ihs.com*.

(1) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981 IBR approved for §§ 63.309(k), 63.772(e), 63.772(h), 63.865(b), 63.1282(d), 63.1282(g), 63.3166(a), 63.3360(e), 63.3545(a), 63.3555(a), 63.4166(a), 63.4362(a), 63.4766(a), 63.4965(a), 63.5160(d), 63.9307(c), 63.9323(a), 63.11148(e), 63.11155(e), 63.11162(f), 63.11163(g), 63.11410(j), 63.11551(a) and 63.11646(a), 63.11945, table 5 to subpart DDDDD of this part, table 4 to subpart JJJJJ of this part, table 5 to subpart UUUUU of this part and table 1 to subpart ZZZZZ of this part.

* * * * *

Subpart HH—[Amended]

■ 10. Section 63.760 is amended by:
■ a. Revising paragraph (a)(1) introductory text;
■ b. Revising paragraph (a)(1)(i);
■ c. Revising paragraph (a)(1)(iii);
■ d. Revising paragraph (a)(2);
■ e. Revising paragraph (b)(1)(i);
■ f. Adding paragraph (c);
■ g. Revising paragraph (f) introductory text;
■ h. Revising paragraph (f)(1);
■ i. Revising paragraph (f)(2);
■ j. Adding paragraphs (f)(7), (f)(8), and (f)(9); and
■ k. Removing and reserving paragraph (g)(1).

The revisions and additions read as follows:

§ 63.760 Applicability and designation of affected source.

(a) * * *

(1) Facilities that are major or area sources of hazardous air pollutants (HAP) as defined in § 63.761. Emissions for major source determination purposes can be estimated using the maximum natural gas or hydrocarbon liquid throughput, as appropriate, calculated in paragraphs (a)(1)(i) through (iii) of this section. As an alternative to calculating the maximum natural gas or hydrocarbon liquid throughput, the owner or operator of a new or existing source may use the facility's design maximum natural gas or hydrocarbon liquid throughput to estimate the maximum potential emissions. Other means to determine the facility's major source status are allowed, provided the information is documented and recorded to the Administrator's satisfaction in accordance with § 63.10(b)(3). A facility that is determined to be an area source, but subsequently increases its emissions or its potential to emit above the major source levels, and becomes a major source, must comply thereafter with all provisions of this subpart applicable to a major source starting on the applicable compliance date specified in paragraph (f) of this section. Nothing in this paragraph is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

(i) If the owner or operator documents, to the Administrator's satisfaction, a decline in annual natural gas or hydrocarbon liquid throughput, as appropriate, each year for the 5 years prior to October 15, 2012, the owner or operator shall calculate the maximum natural gas or hydrocarbon liquid throughput used to determine maximum potential emissions according to the requirements specified in paragraph (a)(1)(i)(A) of this section. In all other circumstances, the owner or operator shall calculate the maximum throughput used to determine whether a facility is a major source in accordance with the requirements specified in paragraph (a)(1)(i)(B) of this section.

(A) The maximum natural gas or hydrocarbon liquid throughput is the average of the annual natural gas or hydrocarbon liquid throughput for the 3 years prior to October 15, 2012, multiplied by a factor of 1.2.

(B) The maximum natural gas or hydrocarbon liquid throughput is the highest annual natural gas or hydrocarbon liquid throughput over the 5 years prior to October 15, 2012, multiplied by a factor of 1.2.

* * * * *

(iii) The owner or operator shall determine the maximum values for other parameters used to calculate emissions as the maximum for the period over which the maximum natural gas or hydrocarbon liquid throughput is determined in accordance with paragraph (a)(1)(i)(A) or (B) of this section. Parameters, other than glycol circulation rate, shall be based on either highest measured values or annual average. For estimating maximum potential emissions from glycol dehydration units, the glycol circulation rate used in the calculation shall be the unit's maximum rate under its physical and operational design consistent with the definition of potential to emit in § 63.2.

(2) Facilities that process, upgrade, or store hydrocarbon liquids.

* * * * *

(b) * * *

(1) * * *

(i) Each glycol dehydration unit as specified in paragraphs (b)(1)(i)(A) through (C) of this section.

(A) Each large glycol dehydration unit;

(B) Each small glycol dehydration unit for which construction commenced on or before August 23, 2011, is an existing small glycol dehydration unit; and

(C) Each small glycol dehydration unit for which construction commenced after August 23, 2011, is a new small glycol dehydration unit.

* * * * *

(c) Any source that determines it is not a major source but has actual emissions of 5 tons per year or more of a single HAP, or 12.5 tons per year or more of a combination of HAP (*i.e.,* 50 percent of the major source thresholds), shall update its major source determination within 1 year of the prior determination or October 15, 2012, whichever is later, and each year thereafter, using gas composition data measured during the preceding 12 months.

* * * * *

(f) The owner or operator of an affected major source shall achieve compliance with the provisions of this subpart by the dates specified in paragraphs (f)(1), (2), and (f)(7) through (9) of this section. The owner or operator of an affected area source shall achieve compliance with the provisions of this subpart by the dates specified in paragraphs (f)(3) through (6) of this section.

(1) Except as specified in paragraphs (f)(7) through (9) of this section, the owner or operator of an affected major source, the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with the applicable provisions of this subpart no later than June 17, 2002, except as provided for in § 63.6(i). The owner or operator of an area source, the construction or reconstruction of which commenced before February 6, 1998, that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply with this subpart 3 years after becoming a major source.

(2) Except as specified in paragraphs (f)(7) through (9) of this section, the owner or operator of an affected major source, the construction or reconstruction of which commences on

or after February 6, 1998, shall achieve compliance with the applicable provisions of this subpart immediately upon initial startup or June 17, 1999, whichever date is later. Area sources, other than production field facilities identified in (f)(9) of this section, the construction or reconstruction of which commences on or after February 6, 1998, that become major sources shall comply with the provisions of this standard immediately upon becoming a major source.

* * * * *

(7) Each affected existing small glycol dehydration unit, as defined in § 63.761, located at a major source, that commenced construction before August 23, 2011, must achieve compliance no later than October 15, 2015, except as provided in § 63.6(i).

(8) Each affected new small glycol dehydration unit, as defined in § 63.761, located at a major source, that commenced construction on or after August 23, 2011, must achieve compliance immediately upon initial startup or October 15, 2012, whichever is later.

(9) A production field facility, as defined in § 63.761, constructed on or before August 23, 2011, that was previously determined to be an area source but becomes a major source (as defined in paragraph 3 of the major source definition in § 63.761) on the October 15, 2012 must achieve compliance no later than October 15, 2015, except as provided in § 63.6(i).

* * * * *

■ 11. Section 63.761 is amended by:

■ a. Adding, in alphabetical order, definitions for the terms ''affirmative defense,'' ''BTEX,'' ''flare,'' ''large glycol dehydration unit,'' ''responsible official'' and ''small glycol dehydration unit'';

■ b. Revising the definitions for ''associated equipment,'' ''glycol dehydration unit baseline operations,'' and ''storage vessel''; and

■ c. Revising paragraph (3) of the definition for ''major source'' to read as follows:

§ 63.761 Definitions.

* * * * *

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.

* * * * *

Associated equipment, as used in this subpart and as referred to in section 112(n)(4) of the Act, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the wellbore to the point of custody transfer, except glycol dehydration units and storage vessels.

* * * * *

BTEX means benzene, toluene, ethyl benzene and xylene.

* * * * *

Flare means a thermal oxidation system using an open flame (*i.e.,* without enclosure).

* * * * *

Glycol dehydration unit baseline operations means operations representative of the large glycol dehydration unit operations as of June 17, 1999 and the small glycol dehydrator unit operations as of August 23, 2011. For the purposes of this subpart, for determining the percentage of overall HAP emission reduction attributable to process modifications, baseline operations shall be parameter values (including, but not limited to, glycol circulation rate or glycol-HAP absorbency) that represent actual long-term conditions (*i.e.,* at least 1 year). Glycol dehydration units in operation for less than 1 year shall document that the parameter values represent expected long-term operating conditions had process modifications not been made.

* * * * *

Large glycol dehydration unit means a glycol dehydration unit with an actual annual average natural gas flowrate equal to or greater than 85 thousand standard cubic meters per day and actual annual average benzene emissions equal to or greater than 0.90 Mg/yr, determined according to § 63.772(b). A glycol dehydration unit complying with the 0.9 Mg/yr control option under § 63.765(b)(1)(ii) is considered to be a large dehydrator.

Major source * * *

(3) For facilities that are production field facilities, only HAP emissions from glycol dehydration units and storage vessels shall be aggregated for a major source determination. For facilities that are not production field facilities, HAP emissions from all HAP emission units shall be aggregated for a major source determination.

* * * * *

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (*e.g.,* a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under part 70.

* * * * *

Small glycol dehydration unit means a glycol dehydration unit, located at a major source, with an actual annual average natural gas flowrate less than 85 thousand standard cubic meters per day or actual annual average benzene emissions less than 0.90 Mg/yr, determined according to § 63.772(b).

* * * * *

Storage vessel means a tank or other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water and that is constructed primarily of non-earthen materials (*e.g.,* wood, concrete, steel, plastic) that provide structural support. The following process units are not considered storage vessels: Surge control vessels and knockout vessels.

* * * * *

■ 12. Section 63.762 is revised to read as follows:

§ 63.762 Affirmative defense for violations of emission standards during malfunction.

(a) The provisions set forth in this subpart shall apply at all times.

(b) [Reserved]

(c) [Reserved]

(d) In response to an action to enforce the standards set forth in this subpart, you may assert an affirmative defense to

a claim for civil penalties for violations of such standards that are caused by malfunction, as defined in 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.

(1) To establish the affirmative defense in any action to enforce such a standard, you must timely meet the reporting requirements in paragraph (d)(2) of this section, and must prove by a preponderance of evidence that:

(i) The violation:

(A) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when a violation occurred. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(iv) 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; and

(v) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment, and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) 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 violation resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(2) *Report.* The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator with all necessary supporting documentation, that it has met the requirements set forth in paragraph (d)(1) of this section. This affirmative defense report shall be included in the first periodic compliance, deviation report or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

■ 13. Section 63.764 is amended by:

■ a. Revising paragraph (e)(1) introductory text;

■ b. Revising paragraph (i); and

■ c. Adding paragraph (j).

The revisions and addition read as follows:

§ 63.764 General standards.

* * * * *

(e) *Exemptions.* (1) The owner or operator of an area source is exempt from the requirements of paragraph (d) of this section if the criteria listed in paragraph (e)(1)(i) or (ii) of this section are met, except that the records of the determination of these criteria must be maintained as required in § 63.774(d)(1).

* * * * *

(i) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this standard to fail to take action to repair the leak(s) within the specified time. If action is taken to repair the leak(s) within the specified time, failure of that action to successfully repair the leak(s) is not a violation of this standard. However, if the repairs are unsuccessful, and a leak is detected, the owner or operator shall take further action as required by the applicable provisions of this subpart.

(j) At all times the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such 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.

■ 14. Section 63.765 is amended by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (b)(1);

■ c. Revising paragraph (c)(2); and

■ d. Revising paragraph (c)(3).

The revisions read as follows:

§ 63.765 Glycol dehydration unit process vent standards.

(a) This section applies to each glycol dehydration unit subject to this subpart that must be controlled for air emissions as specified in either paragraph (c)(1)(i) or paragraph (d)(1)(i) of § 63.764.

(b) * * *

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by either paragraph (b)(1)(i), (ii), or (iii) of this section.

(i) The owner or operator of a large glycol dehydration unit, as defined in § 63.761, shall connect the process vent to a control device or a combination of control devices through a closed-vent system. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.771(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.771(d).

(ii) The owner or operator of a large glycol dehydration unit shall connect the process vent to a control device or combination of control devices through a closed-vent system and the outlet benzene emissions from the control device(s) shall be reduced to a level less than 0.90 megagrams per year. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.771(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.771(d), except that the performance levels specified in § 63.771(d)(1)(i) and (ii) do not apply.

(iii) You must limit BTEX emissions from each existing small glycol dehydration unit process vent, as defined in § 63.761, to the limit determined in Equation 1 of this section. You must limit BTEX emissions from each new small glycol dehydration unit process vent, as defined in § 63.761, to the limit determined in Equation 2 of this section. The limits determined using Equation 1 or Equation 2 must be met in accordance

with one of the alternatives specified in paragraphs (b)(1)(iii)(A) through (D) of this section.

$$EL_{BTEX} = 3.28x10^{-4} * Throughput * C_{i,BTEX} * 365 \frac{days}{yr} * \frac{1\ Mg}{1x10^{6}\ grams}$$

Equation 1

Where:

EL_{BTEX} = Unit-specific BTEX emission limit, megagrams per year;

3.28×10^{-4} = BTEX emission limit, grams BTEX/standard cubic meter-ppmv;

Throughput = Annual average daily natural gas throughput, standard cubic meters per day.

$C_{i,BTEX}$ = average annual BTEX concentration of the natural gas at the inlet to the glycol dehydration unit, ppmv.

$$EL_{BTEX} = 4.66x10^{-6} * Throughput * C_{i,BTEX} * 365 \frac{days}{yr} * \frac{1\ Mg}{1x10^{6}\ grams}$$

Where:

EL_{BTEX} = Unit-specific BTEX emission limit, megagrams per year;

4.66×10^{-6} = BTEX emission limit, grams BTEX/standard cubic meter-ppmv;

Throughput = Annual average daily natural gas throughput, standard cubic meters per day.

$C_{i,BTEX}$ = average annual BTEX concentration of the natural gas at the inlet to the glycol dehydration unit, ppmv.

(A) Connect the process vent to a control device or combination of control devices through a closed-vent system. The closed vent system shall be designed and operated in accordance with the requirements of § 63.771(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.771(f).

(B) Meet the emissions limit through process modifications in accordance with the requirements specified in § 63.771(e).

(C) Meet the emissions limit for each small glycol dehydration unit using a combination of process modifications and one or more control devices through the requirements specified in paragraphs (b)(1)(iii)(A) and (B) of this section.

(D) Demonstrate that the emissions limit is met through actual uncontrolled operation of the small glycol dehydration unit. Document operational parameters in accordance with the requirements specified in § 63.771(e) and emissions in accordance with the requirements specified in § 63.772(b)(2).

* * * * *

(c) * * *

(2) The owner or operator shall demonstrate, to the Administrator's satisfaction, that the total HAP emissions to the atmosphere from the large glycol dehydration unit process vent are reduced by 95.0 percent through process modifications, or a combination of process modifications and one or more control devices, in accordance with the requirements specified in § 63.771(e).

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total emissions to the atmosphere from the glycol dehydration unit process vent are reduced by one of the levels specified in paragraph (c)(3)(i) through (iv) of this section, through the installation and operation of controls as specified in paragraph (b)(1) of this section.

(i) For any large glycol dehydration unit, HAP emissions are reduced by 95.0 percent or more.

(ii) For any large glycol dehydration unit, benzene emissions are reduced to a level less than 0.90 megagrams per year.

(iii) For each existing small glycol dehydration unit, BTEX emissions are reduced to a level less than the limit calculated by Equation 1 of paragraph (b)(1)(iii) of this section.

(iv) For each new small glycol dehydration unit, BTEX emissions are reduced to a level less than the limit calculated by Equation 2 of paragraph (b)(1)(iii) of this section.

■ 15. Section 63.766 is amended by:

■ a. Adding paragraph (b)(3); and

■ b. Revising paragraph (d) to read as follows:

§ 63.766 Storage vessel standards.

* * * * *

(b) * * *

(3) The owner or operator shall control air emissions by connecting the cover, through a closed-vent system that meets the conditions specified in § 63.771(c), to a process natural gas line.

* * * * *

(d) This section does not apply to storage vessels for which the owner or operator is subject to and controlled under the requirements specified in 40 CFR part 60, subparts Kb or OOOO; or is subject to and controlled under the requirements specified under 40 CFR part 63 subparts G or CC. Storage vessels subject to and controlled under 40 CFR part 60, subpart OOOO shall submit the periodic reports specified in § 63.775(e).

■ 16. Section 63.769 is amended by:

■ a. Revising paragraph (b);

■ b. Revising paragraph (c) introductory text; and

■ c. Revising paragraph (c)(8).

The revisions read as follows:

§ 63.769 Equipment leak standards.

* * * * *

(b) This section does not apply to ancillary equipment and compressors for which the owner or operator is subject to and controlled under the requirements specified in subpart H of this part; or is subject to and controlled under the requirements specified in 40 CFR part 60, subpart OOOO. Ancillary equipment and compressors subject to and controlled under 40 CFR part 60, subpart OOOO shall submit the periodic reports specified in § 63.775(e).

(c) For each piece of ancillary equipment and each compressor subject to this section located at an existing or new source, the owner or operator shall meet the requirements specified in 40 CFR part 61, subpart V, §§ 61.241 through 61.247, except as specified in paragraphs (c)(1) through (8) of this section, except that for valves subject to § 61.242–7(b) or § 61.243–1, a leak is detected if an instrument reading of 500 ppm or greater is measured. A leak detected from a valve at a source constructed on or before August 23, 2011 shall be repaired in accordance with the schedule in § 61.242–7(d), or by October 15, 2013, whichever is later. A leak detected from a valve at a source constructed after August 23, 2011 shall be repaired in accordance with the schedule in § 61.242–7(d), or by October 15, 2012, whichever is later.

* * * * *

(8) Flares, as defined in § 63.761, used to comply with this subpart shall comply with the requirements of § 63.11(b).

■ 17. Section 63.771 is amended by:
■ a. Revising paragraph (c)(1);
■ b. Revising the heading of paragraph (d);
■ c. Adding paragraph (d) introductory text;
■ d. Revising paragraph (d)(1)(i)(C);
■ e. Revising paragraph (d)(1)(ii);
■ f. Revising paragraph (d)(1)(iii);
■ g. Revising paragraph (d)(4)(i);
■ h. Revising paragraph (d)(5)(i);
■ i. Revising paragraph (e)(2);
■ j. Revising paragraph (e)(3) introductory text;
■ k. Revising paragraph (e)(3)(ii); and
■ l. Adding paragraph (f).

The revisions and additions read as follows:

§ 63.771 Control equipment requirements.

* * * * *

(c) *Closed-vent system requirements.* (1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in an emissions unit to a control device that meets the requirements specified in paragraph (d) of this section.

* * * * *

(d) *Control device requirements for sources except small glycol dehydration units.* Owners and operators of small glycol dehydration units, shall comply with the control device requirements in paragraph (f) of this section.

(1) * * *

(i) * * *

(C) Operates at a minimum temperature of 760 degrees C, provided the control device has demonstrated, under § 63.772(e), that combustion zone temperature is an indicator of destruction efficiency.

* * * * *

(ii) A vapor recovery device (*e.g.,* carbon adsorption system or condenser) or other non-destructive control device that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 63.772(e).

(iii) A flare, as defined in § 63.761, that is designed and operated in accordance with the requirements of § 63.11(b).

* * * * *

(4) * * *

(i) Each control device used to comply with this subpart shall be operating at all times when gases, vapors, and fumes are vented from the HAP emissions unit or units through the closed-vent system to the control device, as required under § 63.765, § 63.766, and § 63.769. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

* * * * *

(5) * * *

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system. Records identifying the schedule for replacement and records of each carbon replacement shall be maintained as required in § 63.774(b)(7)(ix). The schedule for replacement shall be submitted with the Notification of Compliance Status Report as specified in § 63.775(d)(5)(iv). Each carbon replacement must be reported in the Periodic Reports as specified in § 63.772(e)(2)(xii).

* * * * *

(e) * * *

(2) The owner or operator shall document, to the Administrator's satisfaction, the conditions for which glycol dehydration unit baseline operations shall be modified to achieve the 95.0 percent overall HAP emission reduction, or BTEX limit determined in § 63.765(b)(1)(iii), as applicable, either through process modifications or through a combination of process modifications and one or more control devices. If a combination of process modifications and one or more control devices are used, the owner or operator shall also establish the emission reduction to be achieved by the control device to achieve an overall HAP emission reduction of 95.0 percent for the glycol dehydration unit process vent or, if applicable, the BTEX limit determined in § 63.765(b)(1)(iii) for the small glycol dehydration unit process vent. Only modifications in glycol dehydration unit operations directly related to process changes, including but not limited to changes in glycol circulation rate or glycol-HAP absorbency, shall be allowed. Changes in the inlet gas characteristics or natural gas throughput rate shall not be considered in determining the overall emission reduction due to process modifications.

(3) The owner or operator that achieves a 95.0 percent HAP emission reduction or meets the BTEX limit determined in § 63.765(b)(1)(iii), as applicable, using process modifications alone shall comply with paragraph (e)(3)(i) of this section. The owner or operator that achieves a 95.0 percent HAP emission reduction or meets the BTEX limit determined in § 63.765(b)(1)(iii), as applicable, using a combination of process modifications and one or more control devices shall comply with paragraphs (e)(3)(i) and (ii) of this section.

* * * * *

(ii) The owner or operator shall comply with the control device requirements specified in paragraph (d) or (f) of this section, as applicable, except that the emission reduction or limit achieved shall be the emission reduction or limit specified for the control device(s) in paragraph (e)(2) of this section.

(f) *Control device requirements for small glycol dehydration units.* (1) The control device used to meet BTEX the emission limit calculated in § 63.765(b)(1)(iii) shall be one of the control devices specified in paragraphs (f)(1)(i) through (iii) of this section.

(i) An enclosed combustion device (*e.g.,* thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated to meet the levels specified in paragraphs (f)(1)(i)(A) or (B) of this section. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(A) The mass content of BTEX in the gases vented to the device is reduced as determined in accordance with the requirements of § 63.772(e).

(B) The concentration of either TOC or total HAP in the exhaust gases at the outlet of the device is reduced to a level equal to or less than 20 parts per million by volume on a dry basis corrected to 3 percent oxygen as determined in accordance with the requirements of § 63.772(e).

(ii) A vapor recovery device (*e.g.,* carbon adsorption system or condenser) or other non-destructive control device that is designed and operated to reduce the mass content of BTEX in the gases vented to the device as determined in accordance with the requirements of § 63.772(e).

(iii) A flare, as defined in § 63.761, that is designed and operated in accordance with the requirements of § 63.11(b).

(2) The owner or operator shall operate each control device in accordance with the requirements specified in paragraphs (f)(2)(i) and (ii) of this section.

(i) Each control device used to comply with this subpart shall be operating at all times. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(ii) For each control device monitored in accordance with the requirements of § 63.773(d), the owner or operator shall demonstrate compliance according to the requirements of either § 63.772(f) or (h).

(3) For each carbon adsorption system used as a control device to meet the requirements of paragraph (f)(1)(ii) of this section, the owner or operator shall manage the carbon as required under (d)(5)(i) and (ii) of this section.

■ 18. Section 63.772 is amended by:
■ a. Revising paragraph (b) introductory text;
■ b. Revising paragraph (b)(1)(ii);
■ c. Revising paragraph (b)(2);
■ d. Revising paragraph (c)(6)(i);
■ e. Adding paragraph (d);
■ f. Revising paragraph (e) introductory text;
■ g. Revising paragraphs (e)(1)(i) through (v);
■ h. Revising paragraph (e)(2);
■ i. Revising paragraph (e)(3) introductory text;
■ j. Revising paragraph (e)(3)(i)(B);
■ k. Revising paragraph (e)(3)(iv)(C)(*1*);
■ l. Adding paragraphs (e)(3)(v) and (vi);
■ m. Revising paragraph (e)(4) introductory text;
■ n. Revising paragraph (e)(4)(i);
■ o. Revising paragraph (e)(5);
■ p. Revising paragraph (f) introductory text;
■ q. Revising paragraphs (f)(2) and (3);
■ r. Adding paragraphs (f)(4) through (6);
■ s. Revising paragraph (g) introductory text;
■ t. Revising paragraph (g)(1) and paragraph (g)(2) introductory text;
■ u. Revising paragraph (g)(2)(iii);
■ v. Revising paragraph (g)(3);
■ w. Adding paragraph (h); and
■ x. Adding paragraph (i).

The revisions and additions read as follows:

§ 63.772 Test methods, compliance procedures, and compliance demonstrations.

* * * * *

(b) *Determination of glycol dehydration unit flowrate, benzene emissions, or BTEX emissions.* The procedures of this paragraph shall be used by an owner or operator to determine glycol dehydration unit natural gas flowrate, benzene emissions, or BTEX emissions.

(1) * * *

(ii) The owner or operator shall document, to the Administrator's satisfaction, the actual annual average natural gas flowrate to the glycol dehydration unit.

(2) The determination of actual average benzene or BTEX emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (b)(2)(i) or (ii) of this section. Emissions shall be determined either uncontrolled, or with federally enforceable controls in place.

(i) The owner or operator shall determine actual average benzene or BTEX emissions using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and may be determined using the procedures documented in the Gas Research Institute (GRI) report entitled ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1); or

(ii) The owner or operator shall determine an average mass rate of benzene or BTEX emissions in kilograms per hour through direct measurement using the methods in § 63.772(a)(1)(i) or (ii), or an alternative method according to § 63.7(f). Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be converted to megagrams per year.

(c) * * *

(6) * * *

(i) Except as provided in paragraph (c)(6)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid, not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inert gases that are not organic hazardous air pollutants or volatile organic compounds, the average stream response factor shall be calculated on an inert-free basis.

* * * * *

(d) *Test procedures and compliance demonstrations for small glycol dehydration units.* This paragraph applies to the test procedures for small dehydration units.

(1) If the owner or operator is using a control device to comply with the emission limit in § 63.765(b)(1)(iii), the requirements of paragraph (e) of this section apply. Compliance is demonstrated using the methods specified in paragraph (f) of this section.

(2) If no control device is used to comply with the emission limit in § 63.765(b)(1)(iii), the owner or operator must determine the glycol dehydration unit BTEX emissions as specified in paragraphs (d)(2)(i) through (iii) of this section. Compliance is demonstrated if the BTEX emissions determined as specified in paragraphs (d)(2)(i) through (iii) are less than the emission limit calculated using the equation in § 63.765(b)(1)(iii).

(i) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites at the outlet of the glycol dehydration unit process vent. Any references to particulate mentioned in Methods 1 and 1A do not apply to this section.

(ii) The gas volumetric flowrate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(iii) The BTEX emissions from the outlet of the glycol dehydration unit process vent shall be determined using the procedures specified in paragraph (e)(3)(v) of this section. As an alternative, the mass rate of BTEX at the outlet of the glycol dehydration unit process vent may be calculated using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and shall be determined using the procedures documented in the Gas Research Institute (GRI) report entitled ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1). When the BTEX mass rate is calculated for glycol dehydration units using the model GRI–GLYCalc™, all BTEX measured by Method 18, 40 CFR part 60, appendix A, shall be summed.

(e) *Control device performance test procedures.* This paragraph applies to the performance testing of control devices. The owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.771(d)(1), (e)(3)(ii) or (f)(1) using a performance test as specified in paragraph (e)(3) of this section. Owners or operators using a condenser have the option to use a design analysis as specified in paragraph (e)(4) of this section. The owner or operator may elect to use the alternative procedures in paragraph (e)(5) of this section for performance testing of a condenser used to control emissions from a glycol dehydration unit process vent. Flares shall meet the provisions in paragraph (e)(2) of this section. As an alternative to conducting a performance test under this section for combustion control devices, a control device that can be

demonstrated to meet the performance requirements of § 63.771(d)(1), (e)(3)(ii) or (f)(1) through a performance test conducted by the manufacturer, as specified in paragraph (h) of this section, can be used.

(1) * * *

(i) Except as specified in paragraph (e)(2) of this section, a flare, as defined in § 63.761, that is designed and operated in accordance with § 63.11(b);

(ii) Except for control devices used for small glycol dehydration units, a boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(iii) Except for control devices used for small glycol dehydration units, a boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel;

(iv) Except for control devices used for small glycol dehydration units, a boiler or process heater burning hazardous waste for which the owner or operator has either been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H;

(v) Except for control devices used for small glycol dehydration units, a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O; or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

* * * * *

(2) An owner or operator shall design and operate each flare, as defined in § 63.761, in accordance with the requirements specified in § 63.11(b) and the compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

(3) For a performance test conducted to demonstrate that a control device meets the requirements of § 63.771(d)(1), (e)(3)(ii) or (f)(1), the owner or operator shall use the test methods and procedures specified in paragraphs (e)(3)(i) through (v) of this section. The initial and periodic performance tests shall be conducted according to the schedule specified in paragraph (e)(3)(vi) of this section.

(i) * * *

(B) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.771(d)(1)(i)(B), or the BTEX emission limit specified in § 63.765(b)(1)(iii) the sampling site shall be located at the outlet of the combustion device.

* * * * *

(iv) * * *

(C) * * *

(*1*) The emission rate correction factor for excess air, integrated sampling and analysis procedures of Method 3A or 3B, 40 CFR part 60, appendix A, ASTM D6522–00 (Reapproved 2005), or ANSI/ASME PTC 19.10–1981, Part 10 (manual portion only) (incorporated by reference as specified in § 63.14) shall be used to determine the oxygen concentration. The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

* * * * *

(v) To determine compliance with the BTEX emission limit specified in § 63.765(b)(1)(iii) the owner or operator shall use one of the following methods: Method 18, 40 CFR part 60, appendix A; ASTM D6420–99 (Reapproved 2004), as specified in § 63.772(a)(1)(ii) (incorporated by reference as specified in § 63.14); or any other method or data that have been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A. The following procedures shall be used to calculate BTEX emissions:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of 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.

(B) The mass rate of BTEX (E_o) shall be computed using the equations and procedures specified in paragraphs (e)(3)(v)(B)(*1*) and (*2*) of this section.

(*1*) The following equation shall be used:

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

Where:

E_o = Mass rate of BTEX at the outlet of the control device, dry basis, kilogram per hour.

C_{oj} = Concentration of sample component j of the gas stream at the outlet of the control device, dry basis, parts per million by volume.

M_{oj} = Molecular weight of sample component j of the gas stream at the outlet of the control device, gram/gram-mole.

Q_o = Flowrate of gas stream at the outlet of the control device, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 degrees C.

n = Number of components in sample.

(*2*) When the BTEX mass rate is calculated, only BTEX compounds measured by Method 18, 40 CFR part 60, appendix A, or ASTM D6420–99 (Reapproved 2004) (incorporated by reference as specified in § 63.14) as specified in § 63.772(a)(1)(ii), shall be summed using the equations in paragraph (e)(3)(v)(B)(*1*) of this section.

(vi) The owner or operator shall conduct performance tests according to the schedule specified in paragraphs (e)(3)(vi)(A) and (B) of this section.

(A) An initial performance test shall be conducted within 180 days after the compliance date that is specified for each affected source in § 63.760(f)(7) through (8), except that the initial performance test for existing combustion control devices (*i.e.,* control devices installed on or before August 23, 2011) at major sources shall be conducted no later than October 15, 2015. If the owner or operator of an existing combustion control device at a major source chooses to replace such device with a control device whose model is tested under § 63.772(h), then the newly installed device shall comply with all provisions of this subpart no later than October 15, 2015. The performance test results shall be submitted in the Notification of Compliance Status Report as required in § 63.775(d)(1)(ii).

(B) Periodic performance tests shall be conducted for all control devices required to conduct initial performance tests except as specified in paragraphs (e)(3)(vi)(B)(*1*) and (*2*) of this section. The first periodic performance test shall be conducted no later than 60 months after the initial performance test required in paragraph (e)(3)(vi)(A) of this section. Subsequent periodic performance tests shall be conducted at intervals no longer than 60 months following the previous periodic performance test or whenever a source desires to establish a new operating limit. The periodic performance test results must be submitted in the next Periodic Report as specified in § 63.775(e)(2)(xi). Combustion control devices meeting the criteria in either paragraph (e)(3)(vi)(B)(*1*) or (*2*) of this section are not required to conduct periodic performance tests.

(*1*) A control device whose model is tested under, and meets the criteria of, § 63.772(h), or

(*2*) A combustion control device demonstrating during the performance test under § 63.772(e) that combustion

zone temperature is an indicator of destruction efficiency and operates at a minimum temperature of 760 degrees C.

(4) For a condenser design analysis conducted to meet the requirements of § 63.771(d)(1), (e)(3)(ii), or (f)(1), the owner or operator shall meet the requirements specified in paragraphs (e)(4)(i) and (ii) of this section. Documentation of the design analysis shall be submitted as a part of the Notification of Compliance Status Report as required in § 63.775(d)(1)(i).

(i) The condenser design analysis shall include an analysis of the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. As an alternative to the condenser design analysis, an owner or operator may elect to use the procedures specified in paragraph (e)(5) of this section.

* * * * *

(5) As an alternative to the procedures in paragraph (e)(4)(i) of this section, an owner or operator may elect to use the procedures documented in the GRI report entitled, ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to generate a condenser performance curve.

(f) *Compliance demonstration for control device performance requirements.* This paragraph applies to the demonstration of compliance with the control device performance requirements specified in § 63.771(d)(1)(i), (e)(3), and (f)(1). Compliance shall be demonstrated using the requirements in paragraphs (f)(1) through (3) of this section. As an alternative, an owner or operator that installs a condenser as the control device to achieve the requirements specified in § 63.771(d)(1)(ii), (e)(3), or (f)(1) may demonstrate compliance according to paragraph (g) of this section. An owner or operator may switch between compliance with paragraph (f) of this section and compliance with paragraph (g) of this section only after at least 1 year of operation in compliance with the selected approach. Notification of such a change in the compliance method shall be reported in the next Periodic Report, as required in § 63.775(e), following the change.

* * * * *

(2) The owner or operator shall calculate the daily average of the applicable monitored parameter in accordance with § 63.773(d)(4) except that the inlet gas flowrate to the control device shall not be averaged.

(3) Compliance with the operating parameter limit is achieved when the daily average of the monitoring parameter value calculated under paragraph (f)(2) of this section is either equal to or greater than the minimum or equal to or less than the maximum monitoring value established under paragraph (f)(1) of this section. For inlet gas flowrate, compliance with the operating parameter limit is achieved when the value is equal to or less than the value established under § 63.772(h) or under the performance test conducted under § 63.772(e), as applicable.

(4) 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, system accuracy audits and required zero and span adjustments), the CMS required in § 63.773(d) must be operated 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 valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. Monitoring system repairs are required to be completed in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(5) Data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities may not be used in calculations used to report emissions or operating levels. All the data collected during all other required data collection periods must be used in assessing the operation of the control device and associated control system.

(6) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required quality monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments), failure to collect required data is a deviation of the monitoring requirements.

(g) *Compliance demonstration with percent reduction or emission limit performance requirements—condensers.* This paragraph applies to the demonstration of compliance with the performance requirements specified in § 63.771(d)(1)(ii), (e)(3), or (f)(1) for condensers. Compliance shall be demonstrated using the procedures in paragraphs (g)(1) through (3) of this section.

(1) The owner or operator shall establish a site-specific condenser performance curve according to § 63.773(d)(5)(ii). For sources required to meet the BTEX limit in accordance with § 63.771(e) or (f)(1) the owner or operator shall identify the minimum percent reduction necessary to meet the BTEX limit.

(2) Compliance with the requirements in § 63.771(d)(1)(ii), (e)(3), or (f)(1) shall be demonstrated by the procedures in paragraphs (g)(2)(i) through (iii) of this section.

* * * * *

(iii) Except as provided in paragraphs (g)(2)(iii)(A) and (B) of this section, at the end of each operating day, the owner or operator shall calculate the 365-day average HAP, or BTEX, emission reduction, as appropriate, from the condenser efficiencies as determined in paragraph (g)(2)(ii) of this section for the preceding 365 operating days. If the owner or operator uses a combination of process modifications and a condenser in accordance with the requirements of § 63.771(e), the 365-day average HAP, or BTEX, emission reduction shall be calculated using the emission reduction achieved through process modifications and the condenser efficiency as determined in paragraph (g)(2)(ii) of this section, both for the previous 365 operating days.

(A) After the compliance dates specified in § 63.760(f), an owner or operator with less than 120 days of data for determining average HAP, or BTEX, emission reduction, as appropriate, shall calculate the average HAP, or BTEX emission reduction, as appropriate, for the first 120 days of operation after the compliance dates. For sources required to meet the overall 95.0 percent reduction requirement, compliance is achieved if the 120-day average HAP emission reduction is equal to or greater than 90.0 percent. For sources required to meet the BTEX limit under § 63.765(b)(1)(iii), compliance is achieved if the average BTEX emission reduction is at least 95.0 percent of the required 365-day value identified under paragraph (g)(1) of this section (*i.e.,* at least 76.0 percent if the 365-day design value is 80.0 percent).

(B) After 120 days and no more than 364 days of operation after the compliance dates specified in

§ 63.760(f), the owner or operator shall calculate the average HAP emission reduction as the HAP emission reduction averaged over the number of days between the current day and the applicable compliance date. For sources required to meet the overall 95.0-percent reduction requirement, compliance with the performance requirements is achieved if the average HAP emission reduction is equal to or greater than 90.0 percent. For sources required to meet the BTEX limit under § 63.765(b)(1)(iii), compliance is achieved if the average BTEX emission reduction is at least 95.0 percent of the required 365-day value identified under paragraph (g)(1) of this section (*i.e.,* at least 76.0 percent if the 365-day design value is 80.0 percent).

(3) If the owner or operator has data for 365 days or more of operation, compliance is achieved based on the applicable criteria in paragraphs (g)(3)(i) or (ii) of this section.

(i) For sources meeting the HAP emission reduction specified in § 63.771(d)(1)(ii) or (e)(3) the average HAP emission reduction calculated in paragraph (g)(2)(iii) of this section is equal to or greater than 95.0 percent.

(ii) For sources required to meet the BTEX limit under § 63.771(e)(3) or (f)(1), compliance is achieved if the average BTEX emission reduction calculated in paragraph (g)(2)(iii) of this section is equal to or greater than the minimum percent reduction identified in paragraph (g)(1) of this section.

(h) *Performance testing for combustion control devices—manufacturers' performance test.* (1) This paragraph applies to the performance testing of a combustion control device conducted by the device manufacturer. The manufacturer shall demonstrate that a specific model of control device achieves the performance requirements in paragraph (h)(7) of this section by conducting a performance test as specified in paragraphs (h)(2) through (6) of this section.

(2) Performance testing shall consist of three one-hour (or longer) test runs for each of the four following firing rate settings making a total of 12 test runs per test. Propene (propylene) gas shall be used for the testing fuel. All fuel analyses shall be performed by an independent third-party laboratory (not affiliated with the control device manufacturer or fuel supplier).

(i) 90–100 percent of maximum design rate (fixed rate).

(ii) 70–100–70 percent (ramp up, ramp down). Begin the test at 70 percent of the maximum design rate. During the first 5 minutes, incrementally ramp the firing rate to 100 percent of the maximum design rate. Hold at 100 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to 70 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iii) 30–70–30 percent (ramp up, ramp down). Begin the test at 30 percent of the maximum design rate. During the first 5 minutes, incrementally ramp the firing rate to 70 percent of the maximum design rate. Hold at 70 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to 30 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iv) 0–30–0 percent (ramp up, ramp down). Begin the test at 0 percent of the maximum design rate. During the first 5 minutes, incrementally ramp the firing rate to 30 percent of the maximum design rate. Hold at 30 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to 0 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(3) All models employing multiple enclosures shall be tested simultaneously and with all burners operational. Results shall be reported for the each enclosure individually and for the average of the emissions from all interconnected combustion enclosures/chambers. Control device operating data shall be collected continuously throughout the performance test using an electronic Data Acquisition System and strip chart. Data shall be submitted with the test report in accordance with paragraph (h)(8)(iii) of this section.

(4) Inlet gas testing shall be conducted as specified in paragraphs (h)(4)(i) through (iii) of this section.

(i) The inlet gas flow metering system shall be located in accordance with Method 2A, 40 CFR part 60, appendix A–1, (or other approved procedure) to measure inlet gas flowrate at the control device inlet location. The fitting for filling inlet gas sample containers shall be located a minimum of 8 pipe diameters upstream of any inlet gas flow monitoring meter.

(ii) Inlet gas flowrate shall be determined using Method 2A, 40 CFR part 60, appendix A–1. Record the start and stop reading for each 60-minute THC test. Record the inlet gas pressure and temperature at 5-minute intervals throughout each 60-minute THC test.

(iii) Inlet gas fuel sampling shall be conducted in accordance with the criteria in paragraphs (h)(4)(iii)(A) and (B) of this section.

(A) At the inlet gas sampling location, securely connect a Silonite-coated stainless steel evacuated canister fitted with a flow controller sufficient to fill the canister over a 3 hour period. Filling shall be conducted as specified in the following:

(*1*) Open the canister sampling valve at the beginning of the total hydrocarbon (THC) test, and close the canister at the end of each THC run.

(*2*) Fill one canister across the three test runs for each THC test such that one composite fuel sample exists for each test condition.

(*3*) Label the canisters individually and record on a chain of custody form.

(B) Each inlet gas sample shall be analyzed using the following methods. The results shall be included in the test report.

(*1*) Hydrocarbon compounds containing between one and five atoms of carbon plus benzene using ASTM D1945–03 (Reapproved 2010) (incorporated by reference as specified in § 63.14).

(*2*) Hydrogen (H_2), carbon monoxide (CO), carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2) using ASTM D1945–03 (Reapproved 2010) (incorporated by reference as specified in § 63.14).

(*3*) Higher heating value using ASTM D3588–98 (Reapproved 2003) or ASTM D4891–89 (Reapproved 2006) (incorporated by reference as specified in § 63.14).

(5) Outlet testing shall be conducted in accordance with the criteria in paragraphs (h)(5)(i) through (v) of this section.

(i) Sampling and flowrate measured in accordance with the following:

(A) The outlet sampling location shall be a minimum of 4 equivalent stack diameters downstream from the highest peak flame or any other flow disturbance, and a minimum of one equivalent stack diameter upstream of the exit or any other flow disturbance. A minimum of two sample ports shall be used.

(B) Flowrate shall be measured using Method 1, 40 CFR part 60, Appendix 1, for determining flow measurement traverse point location; and Method 2, 40 CFR part 60, Appendix 1, shall be used to measure duct velocity. If low flow conditions are encountered (*i.e.,* velocity pressure differentials less than 0.05 inches of water) during the performance test, a more sensitive manometer or other pressure measurement device shall be used to obtain an accurate flow profile.

(ii) Molecular weight shall be determined as specified in paragraphs (h)(4)(iii)(B) and (h)(5)(ii)(A) and (B) of this section.

(A) An integrated bag sample shall be collected during the Method 4, 40 CFR

part 60, Appendix A, moisture test. Analyze the bag sample using a gas chromatograph-thermal conductivity detector (GC–TCD) analysis meeting the following criteria:

(*1*) Collect the integrated sample throughout the entire test, and collect representative volumes from each traverse location.

(*2*) The sampling line shall be purged with stack gas before opening the valve and beginning to fill the bag.

(*3*) The bag contents shall be vigorously mixed prior to the GC analysis.

(*4*) The GC–TCD calibration procedure in Method 3C, 40 CFR part 60, Appendix A, shall be modified by using EPAAlt–045 as follows: For the initial calibration, triplicate injections of any single concentration must agree within 5 percent of their mean to be valid. The calibration response factor for a single concentration re-check must be within 10 percent of the original calibration response factor for that concentration. If this criterion is not met, the initial calibration using at least three concentration levels shall be repeated.

(B) Report the molecular weight of: O_2, CO_2, methane (CH4), and N_2 and include in the test report submitted under § 63.775(d)(iii). Moisture shall be determined using Method 4, 40 CFR part 60, Appendix A. Traverse both ports with the Method 4, 40 CFR part 60, Appendix A, sampling train during each test run. Ambient air shall not be introduced into the Method 3C, 40 CFR part 60, Appendix A, integrated bag sample during the port change.

(iii) Carbon monoxide shall be determined using Method 10, 40 CFR part 60, Appendix A, or ASTM D6522–00 (Reapproved 2005), (incorporated by reference as specified in § 63.14). The test shall be run at the same time and with the sample points used for the EPA Method 25A, 40 CFR part 60, Appendix A, testing. An instrument range of 0–10 per million by volume-dry (ppmvd) shall be used.

(iv) Visible emissions shall be determined using Method 22, 40 CFR part 60, Appendix A. The test shall be performed continuously during each test run. A digital color photograph of the exhaust point, taken from the position of the observer and annotated with date and time, will be taken once per test run and the four photos included in the test report.

(v) Excess air shall be determined using resultant data from the EPA Method 3C tests and EPA Method 3B, 40 CFR part 60, Appendix A, equation 3B–1 or ANSI/ASME PTC 19.10, 1981-Part 10 (manual portion only) (incorporated by reference as specified in § 63.14).

(6) Total hydrocarbons (THC) shall be determined as specified by the following criteria:

(i) Conduct THC sampling using Method 25A, 40 CFR part 60, Appendix A, except the option for locating the probe in the center 10 percent of the stack shall not be allowed. The THC probe must be traversed to 16.7 percent, 50 percent, and 83.3 percent of the stack diameter during each test.

(ii) A valid test shall consist of three Method 25A, 40 CFR part 60, Appendix A, tests, each no less than 60 minutes in duration.

(iii) A 0–10 parts per million by volume-wet (ppmvw) (as propane) measurement range is preferred; as an alternative a 0–30 ppmvw (as carbon) measurement range may be used.

(iv) Calibration gases will be propane in air and be certified through EPA Protocol 1—''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, as amended August 25, 1999, EPA–600/R–97/121 (or more recent if updated since 1999).

(v) THC measurements shall be reported in terms of ppmvw as propane.

(vi) THC results shall be corrected to 3 percent CO_2, as measured by Method 3C, 40 CFR part 60, Appendix A.

(vii) Subtraction of methane/ethane from the THC data is not allowed in determining results.

(7) Performance test criteria:

(i) The control device model tested must meet the criteria in paragraphs (h)(7)(i)(A) through (C) of this section:

(A) Method 22, 40 CFR part 60, Appendix A, results under paragraph (h)(5)(v) of this section with no indication of visible emissions, and

(B) Average Method 25A, 40 CFR part 60, Appendix A, results under paragraph (h)(6) of this section equal to or less than 10.0 ppmvw THC as propane corrected to 3.0 percent CO_2, and

(C) Average CO emissions determined under paragraph (h)(5)(iv) of this section equal to or less than 10 parts ppmvd, corrected to 3.0 percent CO_2.

(D) Excess combustion air shall be equal to or greater than 150 percent.

(ii) The manufacturer shall determine a maximum inlet gas flowrate which shall not be exceeded for each control device model to achieve the criteria in paragraph (h)(7)(i) of this section.

(iii) A control device meeting the criteria in paragraphs (h)(7)(i)(A) through (C) of this section will have demonstrated a destruction efficiency of 95.0 percent for HAP regulated under this subpart.

(8) The owner or operator of a combustion control device model tested under this section shall submit the information listed in paragraphs (h)(8)(i) through (iii) of this section in the test report required under § 63.775(d)(1)(iii).

(i) Full schematic of the control device and dimensions of the device components.

(ii) Design net heating value (minimum and maximum) of the device.

(iii) Test fuel gas flow range (in both mass and volume). Include the minimum and maximum allowable inlet gas flowrate.

(iv) Air/stream injection/assist ranges, if used.

(v) The test parameter ranges listed in paragraphs (h)(8)(v)(A) through (O) of this section, as applicable for the tested model.

(A) Fuel gas delivery pressure and temperature.

(B) Fuel gas moisture range.

(C) Purge gas usage range.

(D) Condensate (liquid fuel) separation range.

(E) Combustion zone temperature range. This is required for all devices that measure this parameter.

(F) Excess combustion air range.

(G) Flame arrestor(s).

(H) Burner manifold pressure.

(I) Pilot flame sensor.

(J) Pilot flame design fuel and fuel usage.

(K) Tip velocity range.

(L) Momentum flux ratio.

(M) Exit temperature range.

(N) Exit flowrate.

(O) Wind velocity and direction.

(vi) The test report shall include all calibration quality assurance/quality control data, calibration gas values, gas cylinder certification, and strip charts annotated with test times and calibration values.

(i) *Compliance demonstration for combustion control devices—manufacturers' performance test.* This paragraph applies to the demonstration of compliance for a combustion control device tested under the provisions in paragraph (h) of this section. Owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.771(d)(1), (e)(3)(ii) or (f)(1), by installing a device tested under paragraph (h) of this section and complying with the following criteria:

(1) The inlet gas flowrate shall meet the range specified by the manufacturer. Flowrate shall be calculated as specified in § 63.773(d)(3)(i)(H)(*1*).

(2) A pilot flame shall be present at all times of operation. The pilot flame shall be monitored in accordance with § 63.773(d)(3)(i)(H)(*2*).

(3) Devices shall be operated with no visible emissions, except for periods not

to exceed a total of 2 minutes during any hour. A visible emissions test using Method 22, 40 CFR part 60, Appendix A, shall be performed each calendar quarter. The observation period shall be 1 hour and shall be conducted according to EPA Method 22, 40 CFR part 60, Appendix A.

(4) Compliance with the operating parameter limit is achieved when the following criteria are met:

(i) The inlet gas flowrate monitored under paragraph (i)(1) of this section is equal to or below the maximum established by the manufacturer; and

(ii) The pilot flame is present at all times; and

(iii) During the visible emissions test performed under paragraph (i)(3) of this section the duration of visible emissions does not exceed a total of 2 minutes during the observation period. Devices failing the visible emissions test shall follow manufacturers repair instructions, if available, or best combustion engineering practice as outlined in the unit inspection and maintenance plan, to return the unit to compliant operation. All repairs and maintenance activities for each unit shall be recorded in a maintenance and repair log and shall be available on site for inspection.

(iv) Following return to operation from maintenance or repair activity, each device must pass a Method 22 visual observation as described in paragraph (i)(3) of this section.

■ 19. Section 63.773 is amended by:
■ a. Adding paragraph (b);
■ b. Revising paragraph (d)(1) introductory text;
■ c. Revising paragraph (d)(1)(ii) and adding paragraphs (d)(1)(iii) and (iv);
■ d. Revising paragraph (d)(2);
■ e. Revising paragraph (d)(3)(i)(A);
■ f. Revising paragraph (d)(3)(i)(D);
■ g. Revising paragraph (d)(3)(i)(G);
■ h. Adding paragraph (d)(3)(i)(H);
■ i. Revising paragraph (d)(4);
■ j. Revising paragraph (d)(5)(i);
■ k. Revising paragraphs (d)(5)(ii)(A) through (C);
■ l. Revising paragraph (d)(6) introductory text;
■ m. Revising paragraphs (d)(6)(ii) and (iii);
■ n. Adding paragraph (d)(6)(vi);
■ o. Revising paragraph (d)(7); and
■ p. Removing paragraphs (d)(8) and (9).

The revisions and additions read as follows:

§ 63.773 Inspection and monitoring requirements.

* * * * *

(b) The owner or operator of a control device whose model was tested under § 63.772(h) shall develop an inspection and maintenance plan for each control device. At a minimum, the plan shall contain the control device manufacturer's recommendations for ensuring proper operation of the device. Semi-annual inspections shall be conducted for each control device with maintenance and replacement of control device components made in accordance with the plan.

* * * * *

(d) *Control device monitoring requirements.* (1) For each control device, except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous parameter monitoring system in accordance with the requirements of paragraphs (d)(3) through (7) of this section. Owners or operators that install and operate a flare in accordance with § 63.771(d)(1)(iii) or (f)(1)(iii) are exempt from the requirements of paragraphs (d)(4) and (5) of this section. The continuous monitoring system shall be designed and operated so that a determination can be made on whether the control device is achieving the applicable performance requirements of § 63.771(d), (e)(3), or (f)(1). Each continuous parameter monitoring system shall meet the following specifications and requirements:

* * * * *

(ii) A site-specific monitoring plan must be prepared that addresses the monitoring system design, data collection, and the quality assurance and quality control elements outlined in paragraph (d) of this section and in § 63.8(d). Each CPMS must be installed, calibrated, operated, and maintained in accordance with the procedures in your approved site-specific monitoring plan. Using the process described in § 63.8(f)(4), you may request approval of monitoring system quality assurance and quality control procedures alternative to those specified in paragraphs (d)(1)(ii)(A) through (E) of this section in your site-specific monitoring plan.

(A) The performance criteria and design specifications for the monitoring system equipment, including the sample interface, detector signal analyzer, and data acquisition and calculations;

(B) Sampling interface (*e.g.,* thermocouple) location such that the monitoring system will provide representative measurements;

(C) Equipment performance checks, system accuracy audits, or other audit procedures;

(D) Ongoing operation and maintenance procedures in accordance with provisions in § 63.8(c)(1) and (3); and

(E) Ongoing reporting and recordkeeping procedures in accordance with provisions in § 63.10(c), (e)(1), and (e)(2)(i).

(iii) The owner or operator must conduct the CPMS equipment performance checks, system accuracy audits, or other audit procedures specified in the site-specific monitoring plan at least once every 12 months.

(iv) The owner or operator must conduct a performance evaluation of each CPMS in accordance with the site-specific monitoring plan.

(2) An owner or operator is exempt from the monitoring requirements specified in paragraphs (d)(3) through (7) of this section for the following types of control devices:

(i) Except for control devices for small glycol dehydration units, a boiler or process heater in which all vent streams are introduced with the primary fuel or is used as the primary fuel; or

(ii) Except for control devices for small glycol dehydration units, a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) * * *

(i) * * *

(A) For a thermal vapor incinerator that demonstrates during the performance test conducted under § 63.772(e) that the combustion zone temperature is an accurate indicator of performance, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location representative of the combustion zone temperature.

* * * * *

(D) For a boiler or process heater, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location representative of the combustion zone temperature.

* * * * *

(G) For a nonregenerative-type carbon adsorption system, the owner or operator shall monitor the design carbon replacement interval established using a performance test performed in accordance with § 63.772(e)(3) and shall be based on the total carbon working capacity of the control device and source operating schedule.

(H) For a control device model whose model is tested under § 63.772(h):

(*1*) The owner or operator shall determine actual average inlet waste gas flowrate using the model GRI–GLYCalc ™, Version 3.0 or higher, ProMax, or AspenTech HYSYS. Inputs to the models shall be representative of actual operating conditions of the controlled unit. The determination shall be performed to coincide with the visible emissions test under § 63.772(i)(3);

(*2*) A heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

* * * * *

(4) Using the data recorded by the monitoring system, except for inlet gas flowrate, the owner or operator must calculate the daily average value for each monitored operating parameter for each operating day. If the emissions unit operation is continuous, the operating day is a 24-hour period. If the emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

(5) * * *

(i) The owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771(d)(1), (e)(3)(ii), or (f)(1). Each minimum or maximum operating parameter value shall be established as follows:

(A) If the owner or operator conducts performance tests in accordance with the requirements of § 63.772(e)(3) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1), (e)(3)(ii) or (f)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by a condenser design analysis or control device manufacturer recommendations or a combination of both.

(B) If the owner or operator uses a condenser design analysis in accordance with the requirements of § 63.772(e)(4) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1), (e)(3)(ii), or (f)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the condenser design analysis and may be supplemented by the condenser manufacturer's recommendations.

(C) If the owner or operator operates a control device where the performance test requirement was met under § 63.772(h) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1), (e)(3)(ii), or (f)(1), then the maximum inlet gas flowrate shall be established based on the performance test and supplemented, as necessary, by the manufacturer recommendations.

(ii) * * *

(A) If the owner or operator conducts a performance test in accordance with the requirements of § 63.772(e)(3) to demonstrate that the condenser achieves the applicable performance requirements in § 63.771(d)(1), (e)(3)(ii), or (f)(1), then the condenser performance curve shall be based on values measured during the performance test and supplemented as necessary by control device design analysis, or control device manufacturer's recommendations, or a combination of both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.772(e)(4)(i) to demonstrate that the condenser achieves the applicable performance requirements specified in § 63.771(d)(1), (e)(3)(ii), or (f)(1), then the condenser performance curve shall be based on the condenser design analysis and may be supplemented by the control device manufacturer's recommendations.

(C) As an alternative to paragraph (d)(5)(ii)(B) of this section, the owner or operator may elect to use the procedures documented in the GRI report entitled, ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1) as inputs for the model GRI–GLYCalc ™, Version 3.0 or higher, to generate a condenser performance curve.

(6) An excursion for a given control device is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (d)(6)(i) through (vi) of this section being met. When multiple operating parameters are monitored for the same control device and during the same operating day and more than one of these operating parameters meets an excursion criterion specified in paragraphs (d)(6)(i) through (vi) of this section, then a single excursion is determined to have occurred for the control device for that operating day.

* * * * *

(ii) For sources meeting § 63.771(d)(1)(ii), an excursion occurs when the 365-day average condenser efficiency calculated according to the requirements specified in § 63.772(g)(2)(iii) is less than 95.0 percent. For sources meeting § 63.771(f)(1), an excursion occurs when the 365-day average condenser efficiency calculated according to the requirements specified in § 63.772(g)(2)(iii) is less than 95.0 percent of the identified 365-day required percent reduction.

(iii) For sources meeting § 63.771(d)(1)(ii), if an owner or operator has less than 365 days of data, an excursion occurs when the average condenser efficiency calculated according to the procedures specified in § 63.772(g)(2)(iii)(A) or (B) is less than 90.0 percent. For sources meeting § 63.771(f)(1), an excursion occurs when the 365-day average condenser efficiency calculated according to the requirements specified in § 63.772(g)(2)(iii) is less than the identified 365-day required percent reduction.

* * * * *

(vi) For control device whose model is tested under § 63.772(h) an excursion occurs when:

(A) The inlet gas flowrate exceeds the maximum established during the test conducted under § 63.772(h).

(B) Failure of the quarterly visible emissions test conducted under § 63.772(i)(3) occurs.

(7) For each excursion, the owner or operator shall be deemed to have failed to have applied control in a manner that achieves the required operating parameter limits. Failure to achieve the required operating parameter limits is a violation of this standard.

* * * * *

■ 20. Section 63.774 is amended by:
■ a. Revising paragraph (b)(3) introductory text;
■ b. Removing and reserving paragraph (b)(3)(ii);
■ c. Revising paragraph (b)(4)(ii) introductory text;
■ d. Adding paragraph (b)(4)(ii)(C);
■ e. Revising paragraph (b)(4)(iii);
■ f. Adding paragraph (b)(7)(ix); and
■ g. Adding paragraphs (g) through (i).

The revisions and additions read as follows:

§ 63.774 Recordkeeping requirements.

* * * * *

(b) * * *

(3) Records specified in § 63.10(c) for each monitoring system operated by the

owner or operator in accordance with the requirements of § 63.773(d). Notwithstanding the requirements of § 63.10(c), monitoring data recorded during periods identified in paragraphs (b)(3)(i) through (iv) of this section shall not be included in any average or percent leak rate computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating or failed to collect required data.

* * * * *

(4) * * *

(ii) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.773(d)(4) of this subpart, except as specified in paragraphs (b)(4)(ii)(A) through (C) of this section.

* * * * *

(C) For a control device whose model is tested under § 63.772(h), the records required in paragraph (h) of this section.

(iii) Hourly records of the times and durations of all periods when the vent stream is diverted from the control device or the device is not operating.

* * * * *

(7) * * *

(ix) Records identifying the carbon replacement schedule under § 63.771(d)(5) and records of each carbon replacement.

* * * * *

(g) The owner or operator of an affected source subject to this subpart shall maintain records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control equipment and monitoring equipment. The owner or operator shall maintain records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.764(j), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(h) Record the following when using a control device whose model is tested under § 63.772(h) to comply with § 63.771(d), (e)(3)(ii), and (f)(1):

(1) All visible emission readings and flowrate calculations made during the compliance determination required by § 63.772(i); and

(2) All hourly records and other recorded periods when the pilot flame is absent.

(i) The date the semi-annual maintenance inspection required under § 63.773(b) is performed. Include a list of any modifications or repairs made to the control device during the inspection and other maintenance performed such as cleaning of the fuel nozzles.

■ 21. Section 63.775 is amended by:

■ a. Revising paragraph (b)(1);

■ b. Revising paragraph (b)(6);

■ c. Removing and reserving paragraph (b)(7);

■ d. Revising paragraph (c)(1);

■ e. Revising paragraph (c)(6);

■ f. Revising paragraph (c)(7)(i);

■ g. Revising paragraph (d)(1)(i);

■ h. Revising paragraph (d)(1)(ii) introductory text;

■ i. Revising paragraph (d)(5)(ii);

■ j. Adding paragraph (d)(5)(iv);

■ k. Revising paragraph (d)(11);

■ l. Adding paragraphs (d)(13) and (d)(14);

■ m. Revising paragraphs (e)(2) introductory text, (e)(2)(ii)(B) and (C);

■ n. Adding paragraphs (e)(2)(ii)(E) and (F);

■ o. Adding paragraphs (e)(2)(xi) through (xiv); and

■ p. Adding paragraph (g).

The revisions and additions read as follows:

§ 63.775 Reporting requirements.

* * * * *

(b) * * *

(1) The initial notifications required for existing affected sources under § 63.9(b)(2) shall be submitted as provided in paragraphs (b)(1)(i) and (ii) of this section.

(i) Except as otherwise provided in paragraph (b)(1)(ii) of this section, the initial notifications shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by June 17, 2000, whichever is later. Affected sources that are major sources on or before June 17, 2000, and plan to be area sources by June 17, 2002, shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

(ii) An affected source identified under § 63.760(f)(7) or (9) shall submit an initial notification required for existing affected sources under § 63.9(b)(2) within 1 year after the affected source becomes subject to the provisions of this subpart or by October 15, 2013, whichever is later. An affected source identified under § 63.760(f)(7) or (9) that plans to be an area source by October 15, 2015, shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

* * * * *

(6) If there was a malfunction during the reporting period, the Periodic Report specified in paragraph (e) of this section shall include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.764(j), including actions taken to correct a malfunction.

* * * * *

(c) * * *

(1) The initial notifications required under § 63.9(b)(2) not later than January 3, 2008. In addition to submitting your initial notification to the addressees specified under § 63.9(a), you must also submit a copy of the initial notification to the EPA's Office of Air Quality Planning and Standards. Send your notification via email to *Oil and Gas Sector@epa.gov* or via U.S. mail or other mail delivery service to U.S. EPA, Sector Policies and Programs Division/ Fuels and Incineration Group (E143–01), Attn: Oil and Gas Project Leader, Research Triangle Park, NC 27711.

* * * * *

(6) If there was a malfunction during the reporting period, the Periodic Report specified in paragraph (e) of this section shall include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.764(j), including actions taken to correct a malfunction.

(7) * * *

(i) Documentation of the source's location relative to the nearest UA plus offset and UC boundaries. This information shall include the latitude and longitude of the affected source; whether the source is located in an urban cluster with 10,000 people or more; the distance in miles to the nearest urbanized area boundary if the source is not located in an urban cluster with 10,000 people or more; and the name of the nearest urban cluster with 10,000 people or more and nearest urbanized area.

* * * * *

(d) * * *

(1) * * *

(i) The condenser design analysis documentation specified in

§ 63.772(e)(4) of this subpart, if the owner or operator elects to prepare a design analysis.

(ii) If the owner or operator is required to conduct a performance test, the performance test results including the information specified in paragraphs (d)(1)(ii)(A) and (B) of this section. Results of a performance test conducted prior to the compliance date of this subpart can be used provided that the test was conducted using the methods specified in § 63.772(e)(3) and that the test conditions are representative of current operating conditions. If the owner or operator operates a combustion control device model tested under § 63.772(h), an electronic copy of the performance test results shall be submitted via email to *Oil_and_Gas_PT@EPA.GOV* unless the test results for that model of combustion control device are posted at the following Web site: *epa.gov/airquality/oilandgas/*.

* * * * *

(5) * * *

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in § 63.773(d)(5). This explanation shall include any data and calculations used to develop the value and a description of why the chosen value indicates that the control device is operating in accordance with the applicable requirements of § 63.771(d)(1), (e)(3)(ii) or (f)(1).

* * * * *

(iv) For each carbon adsorber, the predetermined carbon replacement schedule as required in § 63.771(d)(5)(i).

* * * * *

(11) The owner or operator shall submit the analysis prepared under § 63.771(e)(2) to demonstrate the conditions by which the facility will be operated to achieve the HAP emission reduction of 95.0 percent, or the BTEX limit in § 63.765(b)(1)(iii), through process modifications or a combination of process modifications and one or more control devices.

* * * * *

(13) If the owner or operator installs a combustion control device model tested under the procedures in § 63.772(h), the data listed under § 63.772(h)(8).

(14) For each combustion control device model tested under § 63.772(h), the information listed in paragraphs (d)(14)(i) through (vi) of this section.

(i) Name, address and telephone number of the control device manufacturer.

(ii) Control device model number.

(iii) Control device serial number.

(iv) Date the model of control device was tested by the manufacturer.

(v) Manufacturer's HAP destruction efficiency rating.

(vi) Control device operating parameters, maximum allowable inlet gas flowrate.

(e) * * *

(2) The owner or operator shall include the information specified in paragraphs (e)(2)(i) through (ix) of this section, as applicable.

* * * * *

(ii) * * *

(B) For each excursion caused when the 365-day average condenser control efficiency is less than the value specified in § 63.773(d)(6)(ii), the report must include the 365-day average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

(C) For each excursion caused when condenser control efficiency is less than the value specified in § 63.773(d)(6)(iii), the report must include the average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

* * * * *

(E) For each excursion caused when the maximum inlet gas flowrate identified under § 63.772(h) is exceeded, the report must include the values of the inlet gas identified and the date and duration of the period that the excursion occurred.

(F) For each excursion caused when visible emissions determined under § 63.772(i) exceed the maximum allowable duration, the report must include the date and duration of the period that the excursion occurred, repairs affected to the unit, and date the unit was returned to service.

* * * * *

(xi) The results of any periodic test as required in § 63.772(e)(3) conducted during the reporting period.

(xii) For each carbon adsorber used to meet the control device requirements of § 63.771(d)(1), records of each carbon replacement that occurred during the reporting period.

(xiii) For combustion control device inspections conducted in accordance with § 63.773(b) the records specified in § 63.774(i).

(xiv) Certification by a responsible official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

* * * * *

(g) *Electronic reporting.* (1) Within 60 days after the date of completing each performance test (defined in § 63.2) as required by this subpart you must submit the results of the performance tests required by this subpart to EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through EPA's Central Data Exchange (CDX) (*www.epa.gov/cdx*). Performance test data must be submitted in the file format generated through use of EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods on the ERT Web site are subject to this requirement for submitting reports 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 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 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.

(2) All reports required by this subpart not subject to the requirements in paragraph (g)(1) 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 commonly used electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to paragraph (g)(1) of this section in paper format.

■ 22. Appendix to subpart HH of part 63 is amended by revising Table 2 to read as follows:

Appendix to Subpart HH of Part 63—Tables

* * * * *

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applicable to subpart HH	Explanation
§ 63.1(a)(1)	Yes.	
§ 63.1(a)(2)	Yes.	
§ 63.1(a)(3)	Yes.	
§ 63.1(a)(4)	Yes.	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6)	Yes.	
§ 63.1(a)(7) through (a)(9)	No	Section reserved.
§ 63.1(a)(10)	Yes.	
§ 63.1(a)(11)	Yes.	
§ 63.1(a)(12)	Yes.	
§ 63.1(b)(1)	No	Subpart HH specifies applicability.
§ 63.1(b)(2)	No	Section reserved.
§ 63.1(b)(3)	Yes.	
§ 63.1(c)(1)	No	Subpart HH specifies applicability.
§ 63.1(c)(2)	Yes	Subpart HH exempts area sources from the requirement to obtain a Title V permit unless otherwise required by law as specified in § 63.760(h).
§ 63.1(c)(3) and (c)(4)	No	Section reserved.
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Except definition of major source is unique for this source category and there are additional definitions in subpart HH.
§ 63.3(a) through (c)	Yes.	
§ 63.4(a)(1) through (a)(2)	Yes.	
§ 63.4(a)(3) through (a)(5)	No	Section reserved.
§ 63.4(b)	Yes.	
§ 63.4(c)	Yes.	
§ 63.5(a)(1)	Yes.	
§ 63.5(a)(2)	Yes.	
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)	Yes.	
§ 63.5(b)(4)	Yes.	
§ 63.5(b)(5)	No	Section Reserved.
§ 63.5(b)(6)	Yes.	
§ 63.5(c)	No	Section reserved.
§ 63.5(d)(1)	Yes.	
§ 63.5(d)(2)	Yes.	
§ 63.5(d)(3)	Yes.	
§ 63.5(d)(4)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)(1)	Yes.	
§ 63.5(f)(2)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)	Yes.	
§ 63.6(b)(2)	Yes.	
§ 63.6(b)(3)	Yes.	
§ 63.6(b)(4)	Yes.	
§ 63.6(b)(5)	Yes.	
§ 63.6(b)(6)	No	Section reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)	Yes.	
§ 63.6(c)(2)	Yes.	
§ 63.6(c)(3) through (c)(4)	No	Section reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Section reserved.
§ 63.6(e)(1)(i)	No	See § 63.764(j) for general duty requirement.
§ 63.6(e)(1)(ii)	No.	
§ 63.6(e)(1)(iii)	Yes.	
§ 63.6(e)(2)	No	Section reserved.
§ 63.6(e)(3)	No.	
§ 63.6(f)(1)	No.	
§ 63.6(f)(2)	Yes.	
§ 63.6(f)(3)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)(1)	No.	
§ 63.6(h)(2) through (h)(9)	Yes.	
§ 63.6(i)(1) through (i)(14)	Yes.	
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Explanation
§ 63.7(a)(1)	Yes.	
§ 63.7(a)(2)	Yes	But the performance test results must be submitted within 180 days after the compliance date.
§ 63.7(a)(3)	Yes.	
§ 63.7(a)(4)	Yes.	
§ 63.7(c)	Yes.	
§ 63.7(d)	Yes.	
§ 63.7(e)(1)	No.	
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	Yes.	
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes.	
§ 63.7(g)	Yes.	
§ 63.7(h)	Yes.	
§ 63.8(a)(1)	Yes.	
§ 63.8(a)(2)	Yes.	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)(1)	Yes.	
§ 63.8(b)(2)	Yes.	
§ 63.8(b)(3)	Yes.	
§ 63.8(c)(1)	No.	
§ 63.8(c)(1)(i)	No.	
§ 63.8(c)(1)(ii)	Yes.	
§ 63.8(c)(1)(iii)	No.	
§ 63.8(c)(2)	Yes.	
§ 63.8(c)(3)	Yes.	
§ 63.8(c)(4)	Yes.	
§ 63.8(c)(4)(i)	No	Subpart HH does not require continuous opacity monitors.
§ 63.8(c)(4)(ii)	Yes.	
§ 63.8(c)(5) through (c)(8)	Yes.	
§ 63.8(d)(1)	Yes.	
§ 63.8(d)(2)	Yes.	
§ 63.8(d)(3)	Yes	Except for last sentence, which refers to an SSM plan. SSM plans are not required.
§ 63.8(e)	Yes	Subpart HH does not specifically require continuous emissions monitor performance evaluation, however, the Administrator can request that one be conducted.
§ 63.8(f)(1) through (f)(5)	Yes.	
§ 63.8(f)(6)	Yes.	
§ 63.8(g)	No	Subpart HH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Existing sources are given 1 year (rather than 120 days) to submit this notification. Major and area sources that meet § 63.764(e) do not have to submit initial notifications.
§ 63.9(b)(3)	No	Section reserved.
§ 63.9(b)(4)	Yes.	
§ 63.9(b)(5)	Yes.	
§ 63.9(c)	Yes.	
§ 63.9(d)	Yes.	
§ 63.9(e)	Yes.	
§ 63.9(f)	Yes.	
§ 63.9(g)	Yes.	
§ 63.9(h)(1) through (h)(3)	Yes	Area sources located outside UA plus offset and UC boundaries are not required to submit notifications of compliance status.
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5) through (h)(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)	Yes	§ 63.774(b)(1) requires sources to maintain the most recent 12 months of data on-site and allows offsite storage for the remaining 4 years of data.
§ 63.10(b)(2)	Yes.	
§ 63.10(b)(2)(i)	No.	
§ 63.10(b)(2)(ii)	No	See § 63.774(g) for recordkeeping of (1) occurrence and duration and (2) actions taken during malfunctions.
§ 63.10(b)(2)(iii)	Yes.	
§ 63.10(b)(2)(iv) through (b)(2)(v)	No.	
§ 63.10(b)(2)(vi) through (b)(2)(xiv)	Yes.	

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Explanation
§ 63.10(b)(3)	Yes	§ 63.774(b)(1) requires sources to maintain the most recent 12 months of data on-site and allows offsite storage for the remaining 4 years of data.
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2) through (c)(4)	No	Sections reserved.
§ 63.10(c)(5) through (c)(8)	Yes.	
§ 63.10(c)(9)	No	Section reserved.
§ 63.10(c)(10) through (11)	No	See § 63.774(g) for recordkeeping of malfunctions.
§ 63.10(c)(12) through (14)	Yes.	
§ 63.10(c)(15)	No.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)	Yes	Area sources located outside UA plus offset and UC boundaries do not have to submit performance test reports.
§ 63.10(d)(3)	Yes.	
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	No	See § 63.775(b)(6) or (c)(6) for reporting of malfunctions.
§ 63.10(e)(1)	Yes	Area sources located outside UA plus offset and UC boundaries are not required to submit reports.
§ 63.10(e)(2)	Yes	Area sources located outside UA plus offset and UC boundaries are not required to submit reports.
§ 63.10(e)(3)(i)	Yes	Subpart HH requires major sources to submit Periodic Reports semi-annually. Area sources are required to submit Periodic Reports annually. Area sources located outside UA plus offset and UC boundaries are not required to submit reports.
§ 63.10(e)(3)(i)(A)	Yes.	
§ 63.10(e)(3)(i)(B)	Yes.	
§ 63.10(e)(3)(i)(C)	No.	
§ 63.10(e)(3)(i)(D)	Yes	Section reserved.
§ 63.10(e)(3)(ii) through (viii)	Yes.	
§ 63.10(e)(4)	Yes.	
§ 63.10(f)	Yes.	
§ 63.11(a) and (b)	Yes.	
§ 63.11(c), (d), and (e)	Yes.	
§ 63.12(a) through (c)	Yes.	
§ 63.13(a) through (c)	Yes.	
§ 63.14(a) through (q)	Yes.	
§ 63.15(a) and (b)	Yes.	
§ 63.16	Yes.	

Subpart HHH—[Amended]

■ 23. Section 63.1270 is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising paragraph (a)(4);
■ c. Revising paragraph (b);
■ d. Revising paragraphs (d)(1) and (2); and
■ e. Adding paragraphs (d)(3) and (4).

The revisions and additions read as follows:

§ 63.1270 Applicability and designation of affected source.

(a) This subpart applies to owners and operators of natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user (if there is no local distribution company), and that are major sources of hazardous air pollutants (HAP) emissions as defined in § 63.1271. Emissions for major source determination purposes can be estimated using the maximum natural gas throughput calculated in either paragraph (a)(1) or (2) of this section and paragraphs (a)(3) and (4) of this section. As an alternative to calculating the maximum natural gas throughput, the owner or operator of a new or existing source may use the facility design maximum natural gas throughput to estimate the maximum potential emissions. Other means to determine the facility's major source status are allowed, provided the information is documented and recorded to the Administrator's satisfaction in accordance with § 63.10(b)(3). A compressor station that transports natural gas prior to the point of custody transfer or to a natural gas processing plant (if present) is not considered a part of the natural gas transmission and storage source category. A facility that is determined to be an area source, but subsequently increases its emissions or its potential to emit above the major source levels (without obtaining and complying with other limitations that keep its potential to emit HAP below major source levels), and becomes a major source, must comply thereafter with all applicable provisions of this subpart starting on the applicable compliance date specified in paragraph (d) of this section. Nothing in this paragraph is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

* * * * *

(4) The owner or operator shall determine the maximum values for other parameters used to calculate potential emissions as the maximum over the same period for which maximum throughput is determined as specified in paragraph (a)(1) or (a)(2) of this section. These parameters shall be based on an annual average or the highest single measured value. For estimating maximum potential emissions from glycol dehydration units, the glycol circulation rate used in the calculation shall be the unit's maximum rate under its physical and

operational design consistent with the definition of potential to emit in § 63.2.

(b) The affected source is each new and existing glycol dehydration unit specified in paragraphs (b)(1) through (3) of this section.

(1) Each large glycol dehydration unit;

(2) Each small glycol dehydration unit for which construction commenced on or before August 23, 2011, is an existing small glycol dehydration unit.

(3) Each small glycol dehydration unit for which construction commenced after August 23, 2011, is a new small glycol dehydration unit.

* * * * *

(d) * * *

(1) Except as specified in paragraphs (d)(3) through (4) of this section, the owner or operator of an affected source, the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with this provisions of the subpart no later than June 17, 2002 except as provided for in § 63.6(i). The owner or operator of an area source, the construction or reconstruction of which commenced before February 6, 1998, that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply with this subpart 3 years after becoming a major source.

(2) Except as specified in paragraphs (d)(3) through (4) of this section, the owner or operator of an affected source, the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the provisions of this subpart immediately upon initial startup or June 17, 1999, whichever date is later. Area sources, the construction or reconstruction of which commences on or after February 6, 1998, that become major sources shall comply with the provisions of this standard immediately upon becoming a major source.

(3) Each affected small glycol dehydration unit, as defined in § 63.1271, located at a major source, that commenced construction before August 23, 2011, must achieve compliance no later than October 15, 2015, except as provided in § 63.6(i).

(4) Each affected small glycol dehydration unit, as defined in § 63.1271, located at a major source, that commenced construction on or after August 23, 2011, must achieve compliance immediately upon initial startup or October 15, 2012, whichever is later.

* * * * *

■ 24. Section 63.1271 is amended by:

■ a. Adding, in alphabetical order, definitions for the terms ''affirmative defense,'' ''BTEX,'' ''flare,'' ''large glycol dehydration units,'' ''responsible official'' and ''small glycol dehydration units;'' and

■ b. Revising the definition for ''glycol dehydration unit baseline operations.''

The additions and revision read as follows:

§ 63.1271 Definitions.

* * * * *

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.

* * * * *

BTEX means benzene, toluene, ethyl benzene, and xylene.

* * * * *

Flare means a thermal oxidation system using an open flame (*i.e.,* without enclosure).

* * * * *

Glycol dehydration unit baseline operations means operations representative of the large glycol dehydration unit operations as of June 17, 1999 and the small glycol dehydration unit operations as of August 23, 2011. For the purposes of this subpart, for determining the percentage of overall HAP emission reduction attributable to process modifications, glycol dehydration unit baseline operations shall be parameter values (including, but not limited to, glycol circulation rate or glycol-HAP absorbency) that represent actual long-term conditions (*i.e.,* at least 1 year). Glycol dehydration units in operation for less than 1 year shall document that the parameter values represent expected long-term operating conditions had process modifications not been made.

* * * * *

Large glycol dehydration unit means a glycol dehydration unit with an actual annual average natural gas flowrate equal to or greater than 283.0 thousand standard cubic meters per day and actual annual average benzene emissions equal to or greater than 0.90 Mg/yr, determined according to § 63.1282(a). A glycol dehydration unit complying with the 0.9 Mg/yr control option under 63.1275(b)(1)(ii) is considered to be a large dehydrator.

* * * * *

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (*e.g.,* a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under part 70.

* * * * *

Small glycol dehydration unit means a glycol dehydration unit, located at a major source, with an actual annual average natural gas flowrate less than 283.0 thousand standard cubic meters per day or actual annual average benzene emissions less than 0.90 Mg/yr, determined according to § 63.1282(a).

* * * * *

■ 25. Section 63.1272 is revised to read as follows:

§ 63.1272 Affirmative defense for violations of emission standards during malfunction.

(a) The provisions set forth in this subpart shall apply at all times.

(b) [Reserved]

(c) [Reserved]

(d) In response to an action to enforce the standards set forth in this subpart, 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 § 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.

(1) To establish the affirmative defense in any action to enforce such a standard, you must timely meet the reporting requirements in paragraph (d)(2) of this section, and must prove by a preponderance of evidence that:

(i) The violation:

(A) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when a violation occurred. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(iv) 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; and

(v) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment, and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) 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 violation resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(2) *Report.* The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator with all necessary supporting documentation, that it has met the requirements set forth in paragraph (d)(1) of this section. This affirmative defense report shall be included in the first periodic compliance, deviation report or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

■ 26. Section 63.1274 is amended by:

■ a. Revising paragraph (c) introductory text;

■ b. Removing and reserving paragraph (d);

■ c. Revising paragraph (g); and

■ d. Adding paragraph (h).

The revisions and addition read as follows:

§ 63.1274 General standards.

* * * * *

(c) The owner or operator of an affected source (*i.e.,* glycol dehydration unit) located at an existing or new major source of HAP emissions shall comply with the requirements in this subpart as follows:

* * * * *

(d) [Reserved]

* * * * *

(g) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this standard to fail to take action to repair the leak(s) within the specified time. If action is taken to repair the leak(s) within the specified time, failure of that action to successfully repair the leak(s) is not a violation of this standard. However, if the repairs are unsuccessful, and a leak is detected, the owner or operator shall take further action as required by the applicable provisions of this subpart.

(h) At all times the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such 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.

■ 27. Section 63.1275 is amended by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (b)(1);

■ c. Revising paragraph (c)(2); and

■ d. Revising paragraph (c)(3).

The revisions read as follows:

§ 63.1275 Glycol dehydration unit process vent standards.

(a) This section applies to each glycol dehydration unit subject to this subpart that must be controlled for air emissions as specified in paragraph (c)(1) of § 63.1274.

(b) * * *

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by either paragraph (b)(1)(i) or (iii) of this section.

(i) The owner or operator of a large glycol dehydration unit, as defined in § 63.1271, shall connect the process vent to a control device or a combination of control devices through a closed-vent system. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.1281(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.1281(d).

(ii) The owner or operator of a large glycol dehydration unit shall connect the process vent to a control device or a combination of control devices through a closed-vent system and the outlet benzene emissions from the control device(s) shall be less than 0.90 megagrams per year. The closed-vent system shall be designed and operated in accordance with the requirements of § 63.1281(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.1281(d), except that the performance requirements specified in § 63.1281(d)(1)(i) and (ii) do not apply.

(iii) You must limit BTEX emissions from each existing small glycol dehydration unit, as defined in § 63.1271, to the limit determined in Equation 1 of this section. You must limit BTEX emissions from each new small glycol dehydration unit process vent, as defined in § 63.1271, to the limit determined in Equation 2 of this section. The limits determined using Equation 1 or Equation 2, of this section, must be met in accordance with one of the alternatives specified in paragraphs (b)(1)(iii)(A) through (D) of this section.

$$EL_{BTEX} = 3.10x10^{-4} * Throughput * C_{i,BTEX} * 365 \frac{days}{yr} * \frac{1\,Mg}{1x10^{6}\,grams} \quad \text{Equation 1}$$

Where:

EL_{BTEX} = Unit-specific BTEX emission limit, megagrams per year;

3.10×10^{-4} = BTEX emission limit, grams BTEX/standard cubic meter-ppmv;

Throughput = Annual average daily natural gas throughput, standard cubic meters per day;

$C_{i,BTEX}$ = Annual average BTEX concentration of the natural gas at the inlet to the glycol dehydration unit, ppmv.

$$EL_{BTEX} = 5.44x10^{-5} * Throughput * C_{i,BTEX} * 365 \frac{days}{yr} * \frac{1\,Mg}{1x10^{6}\,grams} \quad \text{Equation 2}$$

Where:

EL_{BTEX} = Unit-specific BTEX emission limit, megagrams per year;

5.44×10^{-5} = BTEX emission limit, grams BTEX/standard cubic meter-ppmv;

Throughput = Annual average daily natural gas throughput, standard cubic meters per day;

$C_{i,BTEX}$ = Annual average BTEX concentration of the natural gas at the inlet to the glycol dehydration unit, ppmv.

(A) Connect the process vent to a control device or combination of control devices through a closed-vent system. The closed vent system shall be designed and operated in accordance with the requirements of § 63.1281(c). The control device(s) shall be designed and operated in accordance with the requirements of § 63.1281(f).

(B) Meet the emissions limit through process modifications in accordance with the requirements specified in § 63.1281(e).

(C) Meet the emission limit for each small glycol dehydration unit using a combination of process modifications and one or more control devices through the requirements specified in paragraphs (b)(1)(iii)(A) and (B) of this section.

(D) Demonstrate that the emissions limit is met through actual uncontrolled operation of the small glycol dehydration unit. Document operational parameters in accordance with the requirements specified in § 63.1281(e) and emissions in accordance with the requirements specified in § 63.1282(a)(3).

* * * * *

(c) * * *

(2) The owner or operator shall demonstrate, to the Administrator's satisfaction, that the total HAP emissions to the atmosphere from the large glycol dehydration unit process vent are reduced by 95.0 percent through process modifications or a combination of process modifications and one or more control devices, in accordance with the requirements specified in § 63.1281(e).

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total emissions to the atmosphere from the glycol dehydration unit process vent are reduced by one of the levels specified in paragraph (c)(3)(i) through (iv) through the installation and operation of controls as specified in paragraph (b)(1) of this section.

(i) For any large glycol dehydration unit, HAP emissions are reduced by 95.0 percent or more.

(ii) For any large glycol dehydration unit, benzene emissions are reduced to a level less than 0.90 megagrams per year.

(iii) For each existing small glycol dehydration unit, BTEX emissions are reduced to a level less than the limit calculated in Equation 1 of paragraph (b)(1)(iii) of this section.

(iv) For each new small glycol dehydration unit, BTEX emissions are reduced to a level less than the limit calculated in Equation 2 of paragraph (b)(1)(iii) of this section.

■ 28. Section 63.1281 is amended by:

■ a. Revising paragraph (c)(1);

■ b. Revising the heading of paragraph (d).

■ c. Adding paragraph (d) introductory text;

■ d. Revising paragraph (d)(1)(i)(C);

■ e. Revising paragraphs (d)(1)(ii) and (iii);

■ f. Revising paragraph (d)(4)(i);

■ g. Revising paragraph (d)(5)(i);

■ h. Revising paragraph (e)(2);

■ i. Revising paragraph (e)(3) introductory text;

■ j. Revising paragraph (e)(3)(ii); and

■ k. Adding paragraph (f).

The revisions and additions read as follows:

§ 63.1281 Control equipment requirements.

* * * * *

(c) * * *

(1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in an emissions unit to a control device that meets the requirements specified in paragraph (d) of this section.

* * * * *

(d) *Control device requirements for sources except small glycol dehydration units.* Owners and operators of small glycol dehydration units shall comply with the control requirements in paragraph (f) of this section.

(1) * * *

(i) * * *

(C) Operates at a minimum temperature of 760 degrees C, provided the control device has demonstrated, under § 63.1282(d), that combustion zone temperature is an indicator of destruction efficiency.

* * * * *

(ii) A vapor recovery device (*e.g.,* carbon adsorption system or condenser) or other non-destructive control device that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 63.1282(d).

(iii) A flare, as defined in § 63.1271, that is designed and operated in accordance with the requirements of § 63.11(b).

* * * * *

(4) * * *

(i) Each control device used to comply with this subpart shall be operating at all times when gases, vapors, and fumes are vented from the emissions unit or units through the closed vent system to the control device as required under § 63.1275. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

* * * * *

(5) * * *

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the

carbon adsorption system. Records identifying the schedule for replacement and records of each carbon replacement shall be maintained as required in § 63.1284(b)(7)(ix). The schedule for replacement shall be submitted with the Notification of Compliance Status Report as specified in § 63.1285(d)(4)(iv). Each carbon replacement must be reported in the Periodic Reports as specified in § 63.1285(e)(2)(xi).

* * * * *

(e) * * *

(2) The owner or operator shall document, to the Administrator's satisfaction, the conditions for which glycol dehydration unit baseline operations shall be modified to achieve the 95.0 percent overall HAP emission reduction, or BTEX limit determined in § 63.1275(b)(1)(iii), as applicable, either through process modifications or through a combination of process modifications and one or more control devices. If a combination of process modifications and one or more control devices are used, the owner or operator shall also establish the emission reduction to be achieved by the control device to achieve an overall HAP emission reduction of 95.0 percent for the glycol dehydration unit process vent or, if applicable, the BTEX limit determined in § 63.1275(b)(1)(iii) for the small glycol dehydration unit process vent. Only modifications in glycol dehydration unit operations directly related to process changes, including but not limited to changes in glycol circulation rate or glycol-HAP absorbency, shall be allowed. Changes in the inlet gas characteristics or natural gas throughput rate shall not be considered in determining the overall emission reduction due to process modifications.

(3) The owner or operator that achieves a 95.0 percent HAP emission reduction or meets the BTEX limit determined in § 63.1275(b)(1)(iii), as applicable, using process modifications alone shall comply with paragraph (e)(3)(i) of this section. The owner or operator that achieves a 95.0 percent HAP emission reduction or meets the BTEX limit determined in § 63.1275(b)(1)(iii), as applicable, using a combination of process modifications and one or more control devices shall comply with paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

* * * * *

(ii) The owner or operator shall comply with the control device requirements specified in paragraph (d) or (f) of this section, as applicable, except that the emission reduction or limit achieved shall be the emission reduction or limit specified for the control device(s) in paragraph (e)(2) of this section.

(f) *Control device requirements for small glycol dehydration units.* (1) The control device used to meet BTEX the emission limit calculated in § 63.1275(b)(1)(iii) shall be one of the control devices specified in paragraphs (f)(1)(i) through (iii) of this section.

(i) An enclosed combustion device (*e.g.,* thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated to meet the levels specified in paragraphs (f)(1)(i)(A) or (B) of this section. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(A) The mass content of BTEX in the gases vented to the device is reduced as determined in accordance with the requirements of § 63.1282(d).

(B) The concentration of either TOC or total HAP in the exhaust gases at the outlet of the device is reduced to a level equal to or less than 20 parts per million by volume on a dry basis corrected to 3 percent oxygen as determined in accordance with the requirements of § 63.1282(e).

(ii) A vapor recovery device (*e.g.,* carbon adsorption system or condenser) or other non-destructive control device that is designed and operated to reduce the mass content of BTEX in the gases vented to the device as determined in accordance with the requirements of § 63.1282(d).

(iii) A flare, as defined in § 63.1271, that is designed and operated in accordance with the requirements of § 63.11(b).

(2) The owner or operator shall operate each control device in accordance with the requirements specified in paragraphs (f)(2)(i) and (ii) of this section.

(i) Each control device used to comply with this subpart shall be operating at all times. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(ii) For each control device monitored in accordance with the requirements of § 63.1283(d), the owner or operator shall demonstrate compliance according to the requirements of either § 63.1282(e) or (h).

(3) For each carbon adsorption system used as a control device to meet the requirements of paragraph (f)(1) of this section, the owner or operator shall manage the carbon as required under (d)(5)(i) and (ii) of this section.

■ 29. Section 63.1282 is amended by:

■ a. Revising paragraph (a) introductory text;
■ b. Revising paragraph (a)(1)(ii);
■ c. Revising paragraph (a)(2);
■ d. Revising paragraph (b)(6)(i);
■ e. Adding paragraph (c);
■ f. Revising paragraph (d) introductory text;
■ g. Revising paragraphs (d)(1)(i) through (v);
■ h. Revising paragraph (d)(2);
■ i. Revising paragraph (d)(3) introductory text;
■ j. Revising paragraph (d)(3)(i)(B);
■ k. Revising paragraph (d)(3)(iii) introductory text;
■ l. Revising paragraph (d)(3)(iv) introductory text;
■ m. Revising paragraph (d)(3)(iv)(C)(*1*);
■ n. Adding paragraphs (d)(3)(v) and (vi);
■ o. Revising paragraph (d)(4) introductory text;
■ p. Revising paragraph (d)(4)(i);
■ q. Revising paragraph (d)(5);
■ r. Revising paragraph (e) introductory text;
■ s. Revising paragraphs (e)(2) and (3);
■ t. Adding paragraphs (e)(4) through (e)(6);
■ u. Revising paragraph (f) introductory text;
■ v. Revising paragraph (f)(1);
■ w. Revising paragraph (f)(2) introductory text;
■ x. Revising paragraph (f)(2)(iii) introductory text, (f)(2)(iii)(A) and (f)(2)(iii)(B);
■ y. Revising paragraph (f)(3); and
■ z. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

§ 63.1282 Test methods, compliance procedures, and compliance demonstrations.

(a) *Determination of glycol dehydration unit flowrate, benzene emissions, or BTEX emissions.* The procedures of this paragraph shall be used by an owner or operator to determine glycol dehydration unit natural gas flowrate, benzene emissions, or BTEX emissions.

(1) * * *

(ii) The owner or operator shall document, to the Administrator's satisfaction, the actual annual average natural gas flowrate to the glycol dehydration unit.

(2) The determination of actual average benzene or BTEX emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (a)(2)(i) or (ii) of this section. Emissions shall be determined either uncontrolled or with federally enforceable controls in place.

(i) The owner or operator shall determine actual average benzene or

BTEX emissions using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and may be determined using the procedures documented in the Gas Research Institute (GRI) report entitled ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1); or

(ii) The owner or operator shall determine an average mass rate of benzene or BTEX emissions in kilograms per hour through direct measurement by performing three runs of Method 18 in 40 CFR part 60, appendix A; or ASTM D6420–99 (Reapproved 2004) (incorporated by reference as specified in § 63.14), as specified in § 63.772(a)(1)(ii); or an equivalent method; and averaging the results of the three runs. Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be converted to megagrams per year.

(b) * * *

(6) * * *

(i) Except as provided in paragraph (b)(6)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inert gases that are not organic HAP or VOC, the average stream response factor shall be calculated on an inert-free basis.

* * * * *

(c) *Test procedures and compliance demonstrations for small glycol dehydration units.* This paragraph (c) applies to the test procedures for small dehydration units.

(1) If the owner or operator is using a control device to comply with the emission limit in § 63.1275(b)(1)(iii), the requirements of paragraph (d) of this section apply. Compliance is demonstrated using the methods specified in paragraph (e) of this section.

(2) If no control device is used to comply with the emission limit in § 63.1275(b)(1)(iii), the owner or operator must determine the glycol dehydration unit BTEX emissions as specified in paragraphs (c)(2)(i) through (iii) of this section. Compliance is demonstrated if the BTEX emissions determined as specified in paragraphs (c)(2)(i) through (iii) are less than the emission limit calculated using the equation in § 63.1275(b)(1)(iii).

(i) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites at the outlet of the glycol dehydration unit process vent. Any references to particulate mentioned in Methods 1 and 1A do not apply to this section.

(ii) The gas volumetric flowrate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(iii) The BTEX emissions from the outlet of the glycol dehydration unit process vent shall be determined using the procedures specified in paragraph (d)(3)(v) of this section. As an alternative, the mass rate of BTEX at the outlet of the glycol dehydration unit process vent may be calculated using the model GRI–GLYCalc™, Version 3.0 or higher, and the procedures presented in the associated GRI–GLYCalc™ Technical Reference Manual. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit and shall be determined using the procedures documented in the Gas Research Institute (GRI) report entitled ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1). When the BTEX mass rate is calculated for glycol dehydration units using the model GRI–GLYCalc™, all BTEX measured by Method 18, 40 CFR part 60, appendix A, shall be summed.

(d) *Control device performance test procedures.* This paragraph applies to the performance testing of control devices. The owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1) using a performance test as specified in paragraph (d)(3) of this section. Owners or operators using a condenser have the option to use a design analysis as specified in paragraph (d)(4) of this section. The owner or operator may elect to use the alternative procedures in paragraph (d)(5) of this section for performance testing of a condenser used to control emissions from a glycol dehydration unit process vent. Flares shall meet the provisions in paragraph (d)(2) of this section. As an alternative to conducting a performance test under this section for combustion control devices, a control device that can be demonstrated to meet the performance requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1) through a performance test conducted by the manufacturer, as specified in paragraph (g) of this section, can be used.

(1) * * *

(i) Except as specified in paragraph (d)(2) of this section, a flare, as defined in § 63.1271, that is designed and operated in accordance with § 63.11(b);

(ii) Except for control devices used for small glycol dehydration units, a boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(iii) Except for control devices used for small glycol dehydration units, a boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel;

(iv) Except for control devices used for small glycol dehydration units, a boiler or process heater burning hazardous waste for which the owner or operator has either been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H;

(v) Except for control devices used for small glycol dehydration units, a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

* * * * *

(2) An owner or operator shall design and operate each flare, as defined in § 63.1271, in accordance with the requirements specified in § 63.11(b) and the compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

(3) For a performance test conducted to demonstrate that a control device meets the requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1) the owner or operator shall use the test methods and procedures specified in paragraphs (d)(3)(i) through (v) of this section. The initial and periodic performance tests shall be conducted according to the schedule specified in paragraph (d)(3)(vi) of this section.

(i) * * *

(B) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.1281(d)(1)(i)(B), or the BTEX emission limit specified in § 63.1275(b)(1)(iii), the sampling site

shall be located at the outlet of the combustion device.

* * * * *

(iii) To determine compliance with the control device percent reduction performance requirement in § 63.1281(d)(1)(i)(A), 63.1281(d)(1)(ii), or 63.1281(e)(3)(ii), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A; or ASTM D6420–99 (incorporated by reference as specified in § 63.14), as specified in § 63.772(a)(1)(ii); alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The following procedures shall be used to calculate the percentage of reduction:

* * * * *

(iv) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.1281(d)(1)(i)(B), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A; or Method 25A, 40 CFR part 60, appendix A; or ASTM D6420–99 (Reapproved 2004) (incorporated by reference as specified in § 63.14), as specified in § 63.772(a)(1)(ii), to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that have been validated according to Method 301 of appendix A of this part, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

* * * * *

(C) * * *

(*1*) The emission rate correction factor for excess air, integrated sampling and analysis procedures of Method 3A or 3B, 40 CFR part 60, appendix A, ASTM D6522–00 (Reapproved 2005), or ANSI/ASME PTC 19.10–1981, Part 10 (manual portion only) (incorporated by reference as specified in § 63.14) shall be used to determine the oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

* * * * *

(v) To determine compliance with the BTEX emission limit specified in § 63.1275(b)(1)(iii) the owner or operator shall use one of the following methods: Method 18, 40 CFR part 60, appendix A; ASTM D6420–99 (Reapproved 2004) (incorporated by reference as specified in § 63.14), as specified in § 63.772(a)(1)(ii); or any other method or data that have been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A. The following procedures shall be used to calculate BTEX emissions:

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of 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.

(B) The mass rate of BTEX (E_o) shall be computed using the equations and procedures specified in paragraphs (d)(3)(v)(B)(*1*) and (*2*) of this section.

(*1*) The following equation shall be used:

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

Where:

E_o = Mass rate of BTEX at the outlet of the control device, dry basis, kilogram per hour.

C_{oj} = Concentration of sample component j of the gas stream at the outlet of the control device, dry basis, parts per million by volume.

M_{oj} = Molecular weight of sample component j of the gas stream at the outlet of the control device, gram/gram-mole.

Q_o = Flowrate of gas stream at the outlet of the control device, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 degrees C.

n = Number of components in sample.

(*2*) When the BTEX mass rate is calculated, only BTEX compounds measured by Method 18, 40 CFR part 60, appendix A, or ASTM D6420–99 (Reapproved 2004) (incorporated by reference as specified in § 63.14) as specified in § 63.772(a)(1)(ii), shall be summed using the equations in paragraph (d)(3)(v)(B)(*1*) of this section.

(vi) The owner or operator shall conduct performance tests according to the schedule specified in paragraphs (d)(3)(vi)(A) and (B) of this section.

(A) An initial performance test shall be conducted within 180 days after the compliance date that is specified for each affected source in § 63.1270(d)(3) and (4) except that the initial performance test for existing combustion control devices (*i.e.,* control devices installed on or before August 23, 2011) at major sources shall be conducted no later than October 15, 2015. If the owner or operator of an existing combustion control device at a major source chooses to replace such device with a control device whose model is tested under § 63.1282(g), then the newly installed device shall comply with all provisions of this subpart no later than October 15, 2015. The performance test results shall be submitted in the Notification of Compliance Status Report as required in § 63.1285(d)(1)(ii).

(B) Periodic performance tests shall be conducted for all control devices required to conduct initial performance tests except as specified in paragraphs (e)(3)(vi)(B)(*1*) and (*2*) of this section. The first periodic performance test shall be conducted no later than 60 months after the initial performance test required in paragraph (d)(3)(vi)(A) of this section. Subsequent periodic performance tests shall be conducted at intervals no longer than 60 months following the previous periodic performance test or whenever a source desires to establish a new operating limit. The periodic performance test results must be submitted in the next Periodic Report as specified in § 63.1285(e)(2)(x). Combustion control devices meeting the criteria in either paragraph (e)(3)(vi)(B)(*1*) or (*2*) of this section are not required to conduct periodic performance tests.

(*1*) A control device whose model is tested under, and meets the criteria of, § 63.1282(g), or

(*2*) A combustion control device demonstrating during the performance test under § 63.1282(d) that combustion zone temperature is an indicator of destruction efficiency and operates at a minimum temperature of 760 degrees C.

(4) For a condenser design analysis conducted to meet the requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1), the owner or operator shall meet the requirements specified in paragraphs (d)(4)(i) and (ii) of this section. Documentation of the design analysis shall be submitted as a part of the Notification of Compliance Status Report as required in § 63.1285(d)(1)(i).

(i) The condenser design analysis shall include an analysis of the vent stream composition, constituent concentrations, flowrate, relative humidity, and temperature, and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. As an alternative to the condenser design analysis, an owner or operator may elect to use the procedures specified in paragraph (d)(5) of this section.

* * * * *

(5) As an alternative to the procedures in paragraph (d)(4)(i) of this section, an owner or operator may elect to use the procedures documented in the GRI report entitled, ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions,'' (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to generate a condenser performance curve.

(e) *Compliance demonstration for control devices performance requirements.* This paragraph applies to the demonstration of compliance with the control device performance requirements specified in § 63.1281(d)(1), (e)(3)(ii), and (f)(1). Compliance shall be demonstrated using the requirements in paragraphs (e)(1) through (3) of this section. As an alternative, an owner or operator that installs a condenser as the control device to achieve the requirements specified in § 63.1281(d)(1)(ii), (e)(3)(ii), or (f)(1) may demonstrate compliance according to paragraph (f) of this section. An owner or operator may switch between compliance with paragraph (e) of this section and compliance with paragraph (f) of this section only after at least 1 year of operation in compliance with the selected approach. Notification of such a change in the compliance method shall be reported in the next Periodic Report, as required in § 63.1285(e), following the change.

* * * * *

(2) The owner or operator shall calculate the daily average of the applicable monitored parameter in accordance with § 63.1283(d)(4) except that the inlet gas flowrate to the control device shall not be averaged.

(3) Compliance is achieved when the daily average of the monitoring parameter value calculated under paragraph (e)(2) of this section is either equal to or greater than the minimum or equal to or less than the maximum monitoring value established under paragraph (e)(1) of this section. For inlet gas flowrate, compliance with the operating parameter limit is achieved when the value is equal to or less than the value established under § 63.1282(g) or under the performance test conducted under § 63.1282(d), as applicable.

(4) 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, system accuracy audits and required zero and span adjustments), the CMS required in § 63.1283(d) must be operated 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 valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. Monitoring system repairs are required to be completed in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(5) Data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities may not be used in calculations used to report emissions or operating levels. All the data collected during all other required data collection periods must be used in assessing the operation of the control device and associated control system.

(6) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required quality monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments), failure to collect required data is a deviation of the monitoring requirements.

(f) *Compliance demonstration with percent reduction or emission limit performance requirements—condensers.* This paragraph applies to the demonstration of compliance with the performance requirements specified in § 63.1281(d)(1)(ii), (e)(3) or (f)(1) for condensers. Compliance shall be demonstrated using the procedures in paragraphs (f)(1) through (f)(3) of this section.

(1) The owner or operator shall establish a site-specific condenser performance curve according to the procedures specified in § 63.1283(d)(5)(ii). For sources required to meet the BTEX limit in accordance with § 63.1281(e) or (f)(1) the owner or operator shall identify the minimum percent reduction necessary to meet the BTEX limit.

(2) Compliance with the percent reduction requirement in § 63.1281(d)(1)(ii), (e)(3), or (f)(1) shall be demonstrated by the procedures in paragraphs (f)(2)(i) through (iii) of this section.

* * * * *

(iii) Except as provided in paragraphs (f)(2)(iii)(A), (B), and (D) of this section, at the end of each operating day the owner or operator shall calculate the 30-day average HAP, or BTEX, emission reduction, as appropriate, from the condenser efficiencies as determined in paragraph (f)(2)(ii) of this section for the preceding 30 operating days. If the owner or operator uses a combination of process modifications and a condenser in accordance with the requirements of § 63.1281(e), the 30-day average HAP emission, or BTEX, emission reduction, shall be calculated using the emission reduction achieved through process modifications and the condenser efficiency as determined in paragraph (f)(2)(ii) of this section, both for the preceding 30 operating days.

(A) After the compliance date specified in § 63.1270(d), an owner or operator of a facility that stores natural gas that has less than 30 days of data for determining the average HAP, or BTEX, emission reduction, as appropriate, shall calculate the cumulative average at the end of the withdrawal season, each season, until 30 days of condenser operating data are accumulated. For a facility that does not store natural gas, the owner or operator that has less than 30 days of data for determining average HAP, or BTEX, emission reduction, as appropriate, shall calculate the cumulative average at the end of the calendar year, each year, until 30 days of condenser operating data are accumulated.

(B) After the compliance date specified in § 63.1270(d), for an owner or operator that has less than 30 days of data for determining the average HAP, or BTEX, emission reduction, as appropriate, compliance is achieved if the average HAP, or BTEX, emission reduction, as appropriate, calculated in paragraph (f)(2)(iii)(A) of this section is equal to or greater than 95.0 percent or is equal to or greater than the minimum percent reduction necessary to meet the BTEX emission limit as determined in paragraph (f)(1) of this section.

* * * * *

(3) Compliance is achieved based on the applicable criteria in paragraphs (f)(3)(i) or (ii) of this section.

(i) For sources meeting the HAP emission reduction specified in § 63.1281(d)(1)(ii) or (e)(3) if the average HAP emission reduction calculated in paragraph (f)(2)(iii) of this section is equal to or greater than 95.0 percent.

(ii) For sources required to meet the BTEX limit under § 63.1281(e)(3) or (f)(1), compliance is achieved if the average BTEX emission reduction calculated in paragraph (f)(2)(iii) of this section is equal to or greater than the minimum percent reduction identified in paragraph (f)(1) of this section.

(g) *Performance testing for combustion control devices—manufacturers' performance test.*

(1) This paragraph (g) applies to the performance testing of a combustion control device conducted by the device manufacturer. The manufacturer shall demonstrate that a specific model of control device achieves the performance requirements in (g)(7) of this section by conducting a performance test as specified in paragraphs (g)(2) through (6) of this section.

(2) Performance testing shall consist of three one-hour (or longer) test runs for each of the four following firing rate settings making a total of 12 test runs per test. Propene (propylene) gas shall be used for the testing fuel. All fuel analyses shall be performed by an independent third-party laboratory (not affiliated with the control device manufacturer or fuel supplier).

(i) 90–100 percent of maximum design rate (fixed rate).

(ii) 70–100–70 percent (ramp up, ramp down). Begin the test at 70 percent of the maximum design rate. During the first 5 minutes, incrementally ramp the firing rate to 100 percent of the maximum design rate. Hold at 100 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to 70 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iii) 30–70–30 percent (ramp up, ramp down). Begin the test at 30 percent of the maximum design rate. During the first 5 minutes, incrementally ramp the firing rate to 70 percent of the maximum design rate. Hold at 70 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to 30 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iv) 0–30–0 percent (ramp up, ramp down). Begin the test at 0 percent of the maximum design rate. During the first 5 minutes, incrementally ramp the firing rate to 30 percent of the maximum design rate. Hold at 30 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to 0 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(3) All models employing multiple enclosures shall be tested simultaneously and with all burners operational. Results shall be reported for each enclosure individually and for the average of the emissions from all interconnected combustion enclosures/chambers. Control device operating data shall be collected continuously throughout the performance test using an electronic Data Acquisition System and strip chart. Data shall be submitted with the test report in accordance with paragraph (g)(8)(iii) of this section.

(4) Inlet testing shall be conducted as specified in paragraphs (g)(4)(i) through (iii) of this section.

(i) The inlet gas flow metering system shall be located in accordance with Method 2A, 40 CFR part 60, appendix A–1, (or other approved procedure) to measure inlet gas flowrate at the control device inlet location. The fitting for filling fuel sample containers shall be located a minimum of 8 pipe diameters upstream of any inlet gas flow monitoring meter.

(ii) Inlet gas flowrate shall be determined using Method 2A, 40 CFR part 60, appendix A–1. Record the start and stop reading for each 60-minute THC test. Record the inlet gas pressure and temperature at 5-minute intervals throughout each 60-minute THC test.

(iii) Inlet gas sampling shall be conducted in accordance with the criteria in paragraphs (g)(4)(iii)(A) and (B) of this section.

(A) At the inlet gas sampling location, securely connect a Silonite-coated stainless steel evacuated canister fitted with a flow controller sufficient to fill the canister over a 3 hour period. Filling shall be conducted as specified in the following:

(*1*) Open the canister sampling valve at the beginning of the total hydrocarbon (THC) test, and close the canister at the end of each THC test run.

(*2*) Fill one canister across the three test runs for each THC test such that one composite fuel sample exists for each test condition.

(*3*) Label the canisters individually and record on a chain of custody form.

(B) Each inlet gas sample shall be analyzed using the following methods. The results shall be included in the test report.

(*1*) Hydrocarbon compounds containing between one and five atoms of carbon plus benzene using ASTM D1945–03 (Reapproved 2010) (incorporated by reference as specified in § 63.14).

(*2*) Hydrogen (H_2), carbon monoxide (CO), carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2) using ASTM D1945–03 (Reapproved 2010) (incorporated by reference as specified in § 63.14).

(*3*) Higher heating value using ASTM D3588–98 (Reapproved 2003) or ASTM D4891–89 (Reapproved 2006) (incorporated by reference as specified in § 63.14).

(5) Outlet testing shall be conducted in accordance with the criteria in paragraphs (g)(5)(i) through (v) of this section.

(i) Sampling and flowrate measured in accordance with the following:

(A) The outlet sampling location shall be a minimum of 4 equivalent stack diameters downstream from the highest peak flame or any other flow disturbance, and a minimum of one equivalent stack diameter upstream of the exit or any other flow disturbance. A minimum of two sample ports shall be used.

(B) Flowrate shall be measured using Method 1, 40 CFR part 60, Appendix 1, for determining flow measurement traverse point location; and Method 2, 40 CFR part 60, Appendix 1, shall be used to measure duct velocity. If low flow conditions are encountered (*i.e.,* velocity pressure differentials less than 0.05 inches of water) during the performance test, a more sensitive manometer or other pressure measurement device shall be used to obtain an accurate flow profile.

(ii) Molecular weight shall be determined as specified in paragraphs (g)(4)(iii)(B), and (g)(5)(ii)(A) and (B) of this section.

(A) An integrated bag sample shall be collected during the Method 4, 40 CFR part 60, Appendix A, moisture test. Analyze the bag sample using a gas chromatograph-thermal conductivity detector (GC–TCD) analysis meeting the following criteria:

(*1*) Collect the integrated sample throughout the entire test, and collect representative volumes from each traverse location.

(*2*) The sampling line shall be purged with stack gas before opening the valve and beginning to fill the bag.

(*3*) The bag contents shall be vigorously mixed prior to the GC analysis.

(*4*) The GC–TCD calibration procedure in Method 3C, 40 CFR part 60, Appendix A, shall be modified by using EPAAlt–045 as follows: For the initial calibration, triplicate injections of any single concentration must agree within 5 percent of their mean to be valid. The calibration response factor for a single concentration re-check must be within 10 percent of the original calibration response factor for that concentration. If this criterion is not met, the initial calibration using at least three concentration levels shall be repeated.

(B) Report the molecular weight of: O_2, CO_2, methane (CH4), and N_2 and include in the test report submitted under § 63.775(d)(iii). Moisture shall be determined using Method 4, 40 CFR part 60, Appendix A. Traverse both ports with the Method 4, 40 CFR part 60, Appendix A, sampling train during each test run. Ambient air shall not be

introduced into the Method 3C, 40 CFR part 60, Appendix A, integrated bag sample during the port change.

(iii) Carbon monoxide shall be determined using Method 10, 40 CFR part 60, Appendix A or ASTM D6522–00 (Reapproved 2005) (incorporated by reference as specified in § 63.14). The test shall be run at the same time and with the sample points used for the EPA Method 25A, 40 CFR part 60, Appendix A, testing. An instrument range of 0–10 per million by volume-dry (ppmvd) shall be used.

(iv) Visible emissions shall be determined using Method 22, 40 CFR part 60, Appendix A. The test shall be performed continuously during each test run. A digital color photograph of the exhaust point, taken from the position of the observer and annotated with date and time, will be taken once per test run and the four photos included in the test report.

(v) Excess air shall be determined using resultant data from the EPA Method 3C tests and EPA Method 3B, 40 CFR part 60, Appendix A, equation 3B–1 or ANSI/ASME PTC 19.10–1981, Part 10 (manual portion only) (incorporated by reference as specified in § 63.14).

(6) Total hydrocarbons (THC) shall be determined as specified by the following criteria:

(i) Conduct THC sampling using Method 25A, 40 CFR part 60, Appendix A, except the option for locating the probe in the center 10 percent of the stack shall not be allowed. The THC probe must be traversed to 16.7 percent, 50 percent, and 83.3 percent of the stack diameter during the test run.

(ii) A valid test shall consist of three Method 25A, 40 CFR part 60, Appendix A, tests, each no less than 60 minutes in duration.

(iii) A 0–10 parts per million by volume-wet (ppmvw) (as propane) measurement range is preferred; as an alternative a 0–30 ppmvw (as carbon) measurement range may be used.

(iv) Calibration gases will be propane in air and be certified through EPA Protocol 1—''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, as amended August 25, 1999, EPA–600/R–97/121 (or more recent if updated since 1999).

(v) THC measurements shall be reported in terms of ppmvw as propane.

(vi) THC results shall be corrected to 3 percent CO_2, as measured by Method 3C, 40 CFR part 60, Appendix A.

(vii) Subtraction of methane/ethane from the THC data is not allowed in determining results.

(7) Performance test criteria:

(i) The control device model tested must meet the criteria in paragraphs (g)(7)(i)(A) through (C) of this section:

(A) Method 22, 40 CFR part 60, Appendix A, results under paragraph (g)(5)(v) of this section with no indication of visible emissions, and

(B) Average Method 25A, 40 CFR part 60, Appendix A, results under paragraph (g)(6) of this section equal to or less than 10.0 ppmvw THC as propane corrected to 3.0 percent CO_2, and

(C) Average CO emissions determined under paragraph (g)(5)(iv) of this section equal to or less than 10 parts ppmvd, corrected to 3.0 percent CO_2.

(D) Excess combustion air shall be equal to or greater than 150 percent.

(ii) The manufacturer shall determine a maximum inlet gas flowrate which shall not be exceeded for each control device model to achieve the criteria in paragraph (g)(7)(i) of this section.

(iii) A control device meeting the criteria in paragraph (g)(7)(i)(A) through (C) of this section will have demonstrated a destruction efficiency of 95.0 percent for HAP regulated under this subpart.

(8) The owner or operator of a combustion control device model tested under this section shall submit the information listed in paragraphs (g)(8)(i) through (iii) in the test report required under § 63.775(d)(1)(iii).

(i) Full schematic of the control device and dimensions of the device components.

(ii) Design net heating value (minimum and maximum) of the device.

(iii) Test fuel gas flow range (in both mass and volume). Include the minimum and maximum allowable inlet gas flowrate.

(iv) Air/stream injection/assist ranges, if used.

(v) The test parameter ranges listed in paragraphs (g)(8)(v)(A) through (O) of this section, as applicable for the tested model.

(A) Fuel gas delivery pressure and temperature.

(B) Fuel gas moisture range.

(C) Purge gas usage range.

(D) Condensate (liquid fuel) separation range.

(E) Combustion zone temperature range. This is required for all devices that measure this parameter.

(F) Excess combustion air range.

(G) Flame arrestor(s).

(H) Burner manifold pressure.

(I) Pilot flame sensor.

(J) Pilot flame design fuel and fuel usage.

(K) Tip velocity range.

(L) Momentum flux ratio.

(M) Exit temperature range.

(N) Exit flowrate.

(O) Wind velocity and direction.

(vi) The test report shall include all calibration quality assurance/quality control data, calibration gas values, gas cylinder certification, and strip charts annotated with test times and calibration values.

(h) *Compliance demonstration for combustion control devices—manufacturers' performance test.* This paragraph applies to the demonstration of compliance for a combustion control device tested under the provisions in paragraph (g) of this section. Owners or operators shall demonstrate that a control device achieves the performance requirements of § 63.1281(d)(1), (e)(3)(ii) or (f)(1), by installing a device tested under paragraph (g) of this section and complying with the following criteria:

(1) The inlet gas flowrate shall meet the range specified by the manufacturer. Flowrate shall be calculated as specified in § 63.1283(d)(3)(i)(H)(*1*).

(2) A pilot flame shall be present at all times of operation. The pilot flame shall be monitored in accordance with § 63.1283(d)(3)(i)(H)(*2*).

(3) Devices shall be operated with no visible emissions, except for periods not to exceed a total of 2 minutes during any hour. A visible emissions test using Method 22, 40 CFR part 60, Appendix A, shall be performed each calendar quarter. The observation period shall be 1 hour and shall be conducted according to EPA Method 22, 40 CFR part 60, Appendix A.

(4) Compliance with the operating parameter limit is achieved when the following criteria are met:

(i) The inlet gas flowrate monitored under paragraph (h)(1) of this section is equal to or below the maximum established by the manufacturer; and

(ii) The pilot flame is present at all times; and

(iii) During the visible emissions test performed under paragraph (h)(3) of this section the duration of visible emissions does not exceed a total of 2 minutes during the observation period. Devices failing the visible emissions test shall follow manufacturers repair instructions, if available, or best combustion engineering practice as outlined in the unit inspection and maintenance plan, to return the unit to compliant operation. All repairs and maintenance activities for each unit shall be recorded in a maintenance and repair log and shall be available on site for inspection.

(iv) Following return to operation from maintenance or repair activity, each device must pass a Method 22 visual observation as described in paragraph (h)(3) of this section.

■ 30. Section 63.1283 is amended by:
■ a. Adding paragraph (b);
■ b. Revising paragraph (d)(1) introductory text;
■ c. Revising paragraph (d)(1)(ii) and adding paragraphs (d)(1)(iii) and (iv);
■ d. Revising paragraph (d)(2);
■ e. Revising paragraph (d)(3)(i)(A);
■ f. Revising paragraph (d)(3)(i)(D);
■ g. Revising paragraph (d)(3)(i)(G);
■ h. Adding paragraph (d)(3)(i)(H);
■ i. Revising paragraph (d)(4);
■ j. Revising paragraph (d)(5)(i);
■ k. Revising paragraphs (d)(5)(ii)(A) through (C);
■ l. Revising paragraph (d)(6) introductory text;
■ m. Revising paragraph (d)(6)(ii);
■ n. Adding paragraph (d)(6)(v);
■ o. Revising paragraph (d)(7); and
■ p. Removing and reserving paragraph (d)(8).

The additions and revisions read as follows:

§ 63.1283 Inspection and monitoring requirements.

* * * * *

(b) The owner or operator of a control device whose model was tested under 63.1282(g) shall develop an inspection and maintenance plan for each control device. At a minimum, the plan shall contain the control device manufacturer's recommendations for ensuring proper operation of the device. Semi-annual inspections shall be conducted for each control device with maintenance and replacement of control device components made in accordance with the plan.

* * * * *

(d) *Control device monitoring requirements.* (1) For each control device except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous parameter monitoring system in accordance with the requirements of paragraphs (d)(3) through (7) of this section. Owners or operators that install and operate a flare in accordance with § 63.1281(d)(1)(iii) or (f)(1)(iii) are exempt from the requirements of paragraphs (d)(4) and (5) of this section. The continuous monitoring system shall be designed and operated so that a determination can be made on whether the control device is achieving the applicable performance requirements of § 63.1281(d), (e)(3), or (f)(1). Each continuous parameter monitoring system shall meet the following specifications and requirements:

* * * * *

(ii) A site-specific monitoring plan must be prepared that addresses the monitoring system design, data collection, and the quality assurance and quality control elements outlined in paragraph (d) of this section and in § 63.8(d). Each CPMS must be installed, calibrated, operated, and maintained in accordance with the procedures in your approved site-specific monitoring plan. Using the process described in § 63.8(f)(4), you may request approval of monitoring system quality assurance and quality control procedures alternative to those specified in paragraphs (d)(1)(ii)(A) through (E) of this section in your site-specific monitoring plan.

(A) The performance criteria and design specifications for the monitoring system equipment, including the sample interface, detector signal analyzer, and data acquisition and calculations;

(B) Sampling interface (*e.g.,* thermocouple) location such that the monitoring system will provide representative measurements;

(C) Equipment performance checks, system accuracy audits, or other audit procedures;

(D) Ongoing operation and maintenance procedures in accordance with provisions in § 63.8(c)(1) and (c)(3); and

(E) Ongoing reporting and recordkeeping procedures in accordance with provisions in § 63.10(c), (e)(1), and (e)(2)(i).

(iii) The owner or operator must conduct the CPMS equipment performance checks, system accuracy audits, or other audit procedures specified in the site-specific monitoring plan at least once every 12 months.

(iv) The owner or operator must conduct a performance evaluation of each CPMS in accordance with the site-specific monitoring plan.

(2) An owner or operator is exempted from the monitoring requirements specified in paragraphs (d)(3) through (7) of this section for the following types of control devices:

(i) Except for control devices for small glycol dehydration units, a boiler or process heater in which all vent streams are introduced with the primary fuel or are used as the primary fuel;

(ii) Except for control devices for small glycol dehydration units, a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) * * *

(i) * * *

(A) For a thermal vapor incinerator that demonstrates during the performance test conducted under § 63.1282(d) that combustion zone temperature is an accurate indicator of performance, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location representative of the combustion zone temperature.

* * * * *

(D) For a boiler or process heater, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have a minimum accuracy of ±2 percent of the temperature being monitored in °C, or ±2.5 °C, whichever value is greater. The temperature sensor shall be installed at a location representative of the combustion zone temperature.

* * * * *

(G) For a nonregenerative-type carbon adsorption system, the owner or operator shall monitor the design carbon replacement interval established using a performance test performed in accordance with § 63.1282(d)(3) and shall be based on the total carbon working capacity of the control device and source operating schedule.

(H) For a control device whose model is tested under § 63.1282(g):

(*1*) The owner or operator shall determine actual average inlet waste gas flowrate using the model GRI–GLYCalc™, Version 3.0 or higher, ProMax, or AspenTech HYSYS. Inputs to the models shall be representative of actual operating conditions of the controlled unit. The determination shall be performed to coincide with the visible emissions test under § 63.1282(h)(3);

(*2*) A heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

* * * * *

(4) Using the data recorded by the monitoring system, except for inlet gas flowrate, the owner or operator must calculate the daily average value for each monitored operating parameter for each operating day. If the emissions unit operation is continuous, the operating day is a 24-hour period. If the emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

(5) * * *

(i) The owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to

define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1). Each minimum or maximum operating parameter value shall be established as follows:

(A) If the owner or operator conducts performance tests in accordance with the requirements of § 63.1282(d)(3) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281(d)(1), (e)(3)(ii), or (f)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by a condenser design analysis or control device manufacturer's recommendations or a combination of both.

(B) If the owner or operator uses a condenser design analysis in accordance with the requirements of § 63.1282(d)(4) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281(d)(1), (e)(3)(ii), or (f)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the condenser design analysis and may be supplemented by the condenser manufacturer's recommendations.

(C) If the owner or operator operates a control device where the performance test requirement was met under § 63.1282(g) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281(d)(1), (e)(3)(ii) or (f)(1), then the maximum inlet gas flowrate shall be established based on the performance test and supplemented, as necessary, by the manufacturer recommendations.

(ii) * * *

(A) If the owner or operator conducts a performance test in accordance with the requirements of § 63.1282(d)(3) to demonstrate that the condenser achieves the applicable performance requirements in § 63.1281(d)(1), (e)(3)(ii), or (f)(1), then the condenser performance curve shall be based on values measured during the performance test and supplemented as necessary by control device design analysis, or control device manufacturer's recommendations, or a combination or both.

(B) If the owner or operator uses a control device design analysis in accordance with the requirements of § 63.1282(d)(4)(i) to demonstrate that the condenser achieves the applicable performance requirements specified in § 63.1281(d)(1), (e)(3)(ii), or (f)(1), then the condenser performance curve shall be based on the condenser design analysis and may be supplemented by the control device manufacturer's recommendations.

(C) As an alternative to paragraph (d)(5)(ii)(B) of this section, the owner or operator may elect to use the procedures documented in the GRI report entitled, ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1) as inputs for the model GRI–GLYCalc™, Version 3.0 or higher, to generate a condenser performance curve.

(6) An excursion for a given control device is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (d)(6)(i) through (d)(6)(v) of this section being met. When multiple operating parameters are monitored for the same control device and during the same operating day, and more than one of these operating parameters meets an excursion criterion specified in paragraphs (d)(6)(i) through (d)(6)(v) of this section, then a single excursion is determined to have occurred for the control device for that operating day.

* * * * *

(ii) For sources meeting § 63.1281(d)(1)(ii), an excursion occurs when average condenser efficiency calculated according to the requirements specified in § 63.1282(f)(2)(iii) is less than 95.0 percent, as specified in § 63.1282(f)(3). For sources meeting § 63.1281(f)(1), an excursion occurs when the 30-day average condenser efficiency calculated according to the requirements of § 63.1282(f)(2)(iii) is less than the identified 30-day required percent reduction.

* * * * *

(v) For control device whose model is tested under § 63.1282(g) an excursion occurs when:

(A) The inlet gas flowrate exceeds the maximum established during the test conducted under § 63.1282(g).

(B) Failure of the quarterly visible emissions test conducted under § 63.1282(h)(3) occurs.

(7) For each excursion, the owner or operator shall be deemed to have failed to have applied control in a manner that achieves the required operating parameter limits. Failure to achieve the required operating parameter limits is a violation of this standard.

(8) [Reserved]

* * * * *

■ 31. Section 63.1284 is amended by:

■ a. Revising paragraph (b)(3) introductory text;

■ b. Removing and reserving paragraph (b)(3)(ii);

■ c. Revising paragraph (b)(4)(ii);

■ d. Revising paragraph (b)(4)(iii);

■ e. Adding paragraph (b)(7)(ix); and

■ f. Adding paragraphs (f), (g) and (h).

The revisions and additions read as follows:

§ 63.1284 Recordkeeping requirements.

* * * * *

(b) * * *

(3) Records specified in § 63.10(c) for each monitoring system operated by the owner or operator in accordance with the requirements of § 63.1283(d). Notwithstanding the previous sentence, monitoring data recorded during periods identified in paragraphs (b)(3)(i) through (iv) of this section shall not be included in any average or percent leak rate computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating or failed to collect required data.

* * * * *

(ii) [Reserved]

* * * * *

(4) * * *

(ii) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.1283(d)(4) of this subpart, except as specified in paragraphs (b)(4)(ii)(A) through (C) of this section.

(A) For flares, the records required in paragraph (e) of this section.

(B) For condensers installed to comply with § 63.1275, records of the annual 30-day rolling average condenser efficiency determined under § 63.1282(f) shall be kept in addition to the daily averages.

(C) For a control device whose model is tested under § 63.1282(g), the records required in paragraph (g) of this section.

(iii) Hourly records of the times and durations of all periods when the vent stream is diverted from the control device or the device is not operating.

* * * * *

(7) * * *

(ix) Records identifying the carbon replacement schedule under § 63.1281(d)(5) and records of each carbon replacement.

* * * * *

(f) The owner or operator of an affected source subject to this subpart shall maintain records of the occurrence and duration of each malfunction of

operation (*i.e.,* process equipment) or the air pollution control equipment and monitoring equipment. The owner or operator shall maintain records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.1274(h), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(g) Record the following when using a control device whose model is tested under § 63.1282(g) to comply with § 63.1281(d), (e)(3)(ii) and (f)(1):

(1) All visible emission readings and flowrate calculations made during the compliance determination required by § 63.1282(h); and

(2) All hourly records and other recorded periods when the pilot flame is absent.

(h) The date the semi-annual maintenance inspection required under § 63.1283(b) is performed. Include a list of any modifications or repairs made to the control device during the inspection and other maintenance performed such as cleaning of the fuel nozzles.

■ 32. Section 63.1285 is amended by:
■ a. Revising paragraph (b)(1);
■ b. Revising paragraph (b)(6);
■ c. Removing paragraph (b)(7);
■ d. Revising paragraph (d) introductory text;
■ e. Revising paragraph (d)(1) introductory text;
■ f. Revising paragraph (d)(1)(i);
■ g. Revising paragraph (d)(1)(ii) introductory text;
■ h. Revising paragraph (d)(2) introductory text;
■ i. Revising paragraph (d)(4) introductory text;
■ j. Revising paragraph (d)(4)(ii);
■ k. Adding paragraph (d)(4)(iv);
■ l. Revising paragraph (d)(10);
■ m. Adding paragraphs (d)(11) and (d)(12);
■ n. Revising paragraph (e)(2) introductory text;
■ o. Revising paragraph (e)(2)(ii)(B);
■ p. Adding paragraphs (e)(2)(ii)(D) and (E);
■ q. Adding paragraphs (e)(2)(x) through (xiii); and
■ r. Adding paragraph (g).

The revisions and additions read as follows:

§ 63.1285 Reporting requirements.

* * * * *

(b) * * *

(1) The initial notifications required for existing affected sources under § 63.9(b)(2) shall be submitted as provided in paragraphs (b)(1)(i) and (ii) of this section.

(i) Except as otherwise provided in paragraph (b)(1)(ii) of this section, the initial notification shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by June 17, 2000, whichever is later. Affected sources that are major sources on or before June 17, 2000 and plan to be area sources by June 17, 2002 shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

(ii) An affected source identified under § 63.1270(d)(3) shall submit an initial notification required for existing affected sources under § 63.9(b)(2) within 1 year after the affected source becomes subject to the provisions of this subpart or by October 15, 2013, whichever is later. An affected source identified under § 63.1270(d)(3) that plans to be an area source by October 15, 2015, shall include in this notification a brief, nonbinding description of a schedule for the action(s) that are planned to achieve area source status.

* * * * *

(6) If there was a malfunction during the reporting period, the Periodic Report specified in paragraph (e) of this section shall include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1274(h), including actions taken to correct a malfunction.

* * * * *

(d) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status Report as required under § 63.9(h) within 180 days after the compliance date specified in § 63.1270(d). In addition to the information required under § 63.9(h), the Notification of Compliance Status Report shall include the information specified in paragraphs (d)(1) through (12) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination of the three. If all of the information required under this paragraph have been submitted at any time prior to 180 days after the applicable compliance dates specified in § 63.1270(d), a separate Notification of Compliance Status Report is not required. If an owner or operator submits the information specified in paragraphs (d)(1) through (12) of this section at different times, and/or different submittals, subsequent submittals may refer to previous submittals instead of duplicating and resubmitting the previously submitted information.

(1) If a closed-vent system and a control device other than a flare are used to comply with § 63.1274, the owner or operator shall submit the information in paragraph (d)(1)(iii) of this section and the information in either paragraph (d)(1)(i) or (ii) of this section.

(i) The condenser design analysis documentation specified in § 63.1282(d)(4) of this subpart if the owner or operator elects to prepare a design analysis; or

(ii) If the owner or operator is required to conduct a performance test, the performance test results including the information specified in paragraphs (d)(1)(ii)(A) and (B) of this section. Results of a performance test conducted prior to the compliance date of this subpart can be used provided that the test was conducted using the methods specified in § 63.1282(d)(3), and that the test conditions are representative of current operating conditions. If the owner or operator operates a combustion control device model tested under § 63.1282(g), an electronic copy of the performance test results shall be submitted via email to *Oil_and_Gas_PT@EPA.GOV* unless the test results for that model of combustion control device are posted at the following Web site: *epa.gov/airquality/oilandgas/*.

* * * * *

(2) If a closed-vent system and a flare are used to comply with § 63.1274, the owner or operator shall submit performance test results including the information in paragraphs (d)(2)(i) and (ii) of this section. The owner or operator shall also submit the information in paragraph (d)(2)(iii) of this section.

* * * * *

(4) For each control device other than a flare used to meet the requirements of § 63.1274, the owner or operator shall submit the information specified in paragraphs (d)(4)(i) through (iv) of this section for each operating parameter required to be monitored in accordance with the requirements of § 63.1283(d).

* * * * *

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in § 63.1283(d)(5) of this subpart. This explanation shall include

any data and calculations used to develop the value, and a description of why the chosen value indicates that the control device is operating in accordance with the applicable requirements of § 63.1281(d)(1), (e)(3)(ii), or (f)(1).

* * * * *

(iv) For each carbon adsorber, the predetermined carbon replacement schedule as required in § 63.1281(d)(5)(i).

* * * * *

(10) The owner or operator shall submit the analysis prepared under § 63.1281(e)(2) to demonstrate that the conditions by which the facility will be operated to achieve the HAP emission reduction of 95.0 percent, or the BTEX limit in § 63.1275(b)(1)(iii) through process modifications or a combination of process modifications and one or more control devices.

(11) If the owner or operator installs a combustion control device model tested under the procedures in § 63.1282(g), the data listed under § 63.1282(g)(8).

(12) For each combustion control device model tested under § 63.1282(g), the information listed in paragraphs (d)(12)(i) through (vi) of this section.

(i) Name, address and telephone number of the control device manufacturer.

(ii) Control device model number.

(iii) Control device serial number.

(iv) Date the model of control device was tested by the manufacturer.

(v) Manufacturer's HAP destruction efficiency rating.

(vi) Control device operating parameters, maximum allowable inlet gas flowrate.

* * * * *

(e) * * *

(2) The owner or operator shall include the information specified in paragraphs (e)(2)(i) through (xiii) of this section, as applicable.

* * * * *

(ii) * * *

(B) For each excursion caused when the 30-day average condenser control efficiency is less than the value, as specified in § 63.1283(d)(6)(ii), the report must include the 30-day average values of the condenser control efficiency, and the date and duration of the period that the excursion occurred.

* * * * *

(D) For each excursion caused when the maximum inlet gas flowrate identified under § 63.1282(g) is exceeded, the report must include the values of the inlet gas identified and the date and duration of the period that the excursion occurred.

(E) For each excursion caused when visible emissions determined under § 63.1282(h) exceed the maximum allowable duration, the report must include the date and duration of the period that the excursion occurred, repairs affected to the unit, and date the unit was returned to service.

* * * * *

(x) The results of any periodic test as required in § 63.1282(d)(3) conducted during the reporting period.

(xi) For each carbon adsorber used to meet the control device requirements of § 63.1281(d)(1), records of each carbon replacement that occurred during the reporting period.

(xii) For combustion control device inspections conducted in accordance with § 63.1283(b) the records specified in § 63.1284(h).

(xiii) Certification by a responsible official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

* * * * *

(g) *Electronic reporting.* (1) Within 60 days after the date of completing each performance test (defined in § 63.2) as required by this subpart you must submit the results of the performance tests required by this subpart to EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through EPA's Central Data Exchange (CDX)(*www.epa.gov/cdx*). Performance test data must be submitted in the file format generated through use of EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods on the ERT Web site are subject to this requirement for submitting reports 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 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 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.

(2) All reports required by this subpart not subject to the requirements in paragraph (g)(1) 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 commonly used electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to paragraph (g)(1) of this section in paper format.

■ 33. Section 63.1287 is amended by revising paragraph (a) to read as follows:

§ 63.1287 Alternative means of emission limitation.

(a) If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in HAP emissions from that source achieved under the applicable requirements in §§ 63.1274 through 63.1281, the Administrator will publish a notice in the **Federal Register** permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

* * * * *

■ 34. Appendix to Subpart HHH of Part 63—Table is amended by revising Table 2 to read as follows:

Appendix to Subpart HHH of Part 63—Tables

* * * * *

TABLE 2 TO SUBPART HHH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH

General provisions reference	Applicable to subpart HHH	Explanation
§ 63.1(a)(1)	Yes.	
§ 63.1(a)(2)	Yes.	
§ 63.1(a)(3)	Yes.	
§ 63.1(a)(4)	Yes.	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6) through (a)(8)	Yes.	
§ 63.1(a)(9)	No	Section reserved.
§ 63.1(a)(10)	Yes.	
§ 63.1(a)(11)	Yes.	
§ 63.1(a)(12)	Yes.	
§ 63.1(b)(1)	No	Subpart HHH specifies applicability.
§ 63.1(b)(2)	Yes.	
§ 63.1(b)(3)	No.	
§ 63.1(c)(1)	No	Subpart HHH specifies applicability.
§ 63.1(c)(2)	No.	
§ 63.1(c)(3)	No	Section reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Except definition of major source is unique for this source category and there are additional definitions in subpart HHH.
§ 63.3(a) through (c)	Yes.	
§ 63.4(a)(1)	Yes.	
§ 63.4(a)(2)	Yes.	
§ 63.4(a)(3)	No	Section reserved.
§ 63.4(a)(4)	No	Section reserved.
§ 63.4(a)(5)	No	Section reserved.
§ 63.4(b)	Yes.	
§ 63.4(c)	Yes.	
§ 63.5(a)(1)	Yes.	
§ 63.5(a)(2)	No	Preconstruction review required only for major sources that commence construction after promulgation of the standard.
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)	Yes.	
§ 63.5(b)(4)	Yes.	
§ 63.5(b)(5)	No	Section reserved.
§ 63.5(b)(6)	Yes.	
§ 63.5(c)	No	Section reserved.
§ 63.5(d)(1)	Yes.	
§ 63.5(d)(2)	Yes.	
§ 63.5(d)(3)	Yes.	
§ 63.5(d)(4)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)(1)	Yes.	
§ 63.5(f)(2)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)	Yes.	
§ 63.6(b)(2)	Yes.	
§ 63.6(b)(3)	Yes.	
§ 63.6(b)(4)	Yes.	
§ 63.6(b)(5)	Yes.	
§ 63.6(b)(6)	No	Section reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)	Yes.	
§ 63.6(c)(2)	Yes.	
§ 63.6(c)(3) and (c)(4)	No	Section reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Section reserved.
§ 63.6(e)	Yes.	
§ 63.6(e)	Yes	Except as otherwise specified.
§ 63.6(e)(1)(i)	No	See § 63.1274(h) for general duty requirement.
§ 63.6(e)(1)(ii)	No.	
§ 63.6(e)(1)(iii)	Yes.	
§ 63.6(e)(2)	No	Section reserved.
§ 63.6(e)(3)	No.	
§ 63.6(f)(1)	No.	
§ 63.6(f)(2)	Yes.	
§ 63.6(f)(3)	Yes.	
§ 63.6(g)	Yes.	

TABLE 2 TO SUBPART HHH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH—Continued

General provisions reference	Applicable to subpart HHH	Explanation
§ 63.6(h)(1)	No.	
§ 63.6(h)(2)	Yes.	
§ 63.6(h)(3)	No	Section reserved.
§ 63.6(h)(4) through (h)(9)	Yes.	
§ 63.6(i)(1) through (i)(14)	Yes.	
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7(a)(1)	Yes.	
§ 63.7(a)(2)	Yes	But the performance test results must be submitted within 180 days after the compliance date.
§ 63.7(a)(3)	Yes.	
§ 63.7(a)(4)	Yes.	
§ 63.7(b)	Yes.	
§ 63.7(c)	Yes.	
§ 63.7(d)	Yes.	
§ 63.7(e)(1)	No.	
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	Yes.	
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes.	
§ 63.7(g)	Yes.	
§ 63.7(h)	Yes.	
§ 63.8(a)(1)	Yes.	
§ 63.8(a)(2)	Yes.	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)(1)	Yes.	
§ 63.8(b)(2)	Yes.	
§ 63.8(b)(3)	Yes.	
§ 63.8(c)(1)	Yes.	
§ 63.8(c)(1)(i)	No.	
§ 63.8(c)(1)(ii)	Yes.	
§ 63.8(c)(1)(iii)	No.	
§ 63.8(c)(2)	Yes.	
§ 63.8(c)(3)	Yes.	
§ 63.8(c)(4)	No.	
§ 63.8(c)(5) through (c)(8)	Yes.	
§ 63.8(d)(1)	Yes.	
§ 63.8(d)(2)	Yes.	
§ 63.8(d)(3)	Yes	Except for last sentence, which refers to an SSM plan. SSM plans are not required.
§ 63.8(e)	Yes	Subpart HHH does not specifically require continuous emissions monitor performance evaluations, however, the Administrator can request that one be conducted.
§ 63.8(f)(1) through (f)(5)	Yes.	
§ 63.8(f)(6)	No	Subpart HHH does not require continuous emissions monitoring.
§ 63.8(g)	No	Subpart HHH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Existing sources are given 1 year (rather than 120 days) to submit this notification.
§ 63.9(b)(3)	No	Section reserved.
§ 63.9(b)(4)	Yes.	
§ 63.9(b)(5)	Yes.	
§ 63.9(c)	Yes.	
§ 63.9(d)	Yes.	
§ 63.9(e)	Yes.	
§ 63.9(f)	Yes.	
§ 63.9(g)	Yes.	
§ 63.9(h)(1) through (h)(3)	Yes.	
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5) and (h)(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)	Yes	Section 63.1284(b)(1) requires sources to maintain the most recent 12 months of data on-site and allows offsite storage for the remaining 4 years of data.
§ 63.10(b)(2)	Yes.	

TABLE 2 TO SUBPART HHH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH—Continued

General provisions reference	Applicable to subpart HHH	Explanation
§ 63.10(b)(2)(i)	No.	
§ 63.10(b)(2)(ii)	No	See § 63.1284(f) for recordkeeping of (1) occurrence and duration and (2) actions taken during malfunction.
§ 63.10(b)(2)(iii)	Yes.	
§ 63.10(b)(2)(iv) through (b)(2)(v)	No.	
§ 63.10(b)(2)(vi) through (b)(2)(xiv)	Yes.	
§ 63.10(b)(3)	No.	
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2) through (c)(4)	No	Sections reserved.
§ 63.10(c)(5) through (c)(8)	Yes.	
§ 63.10(c)(9)	No	Section reserved.
§ 63.10(c)(10) through (c)(11)	No	See § 63.1284(f) for recordkeeping of malfunctions.
§ 63.10(c)(12) through (c)(14)	Yes.	
§ 63.10(c)(15)	No.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)	Yes.	
§ 63.10(d)(3)	Yes.	
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	No	See § 63.1285(b)(6) for reporting of malfunctions.
§ 63.10(e)(1)	Yes.	
§ 63.10(e)(2)	Yes.	
§ 63.10(e)(3)(i)	Yes	Subpart HHH requires major sources to submit Periodic Reports semi-annually.
§ 63.10(e)(3)(i)(A)	Yes.	
§ 63.10(e)(3)(i)(B)	Yes.	
§ 63.10(e)(3)(i)(C)	No	Section reserved.
§ 63.10(e)(3)(i)(D)	Yes.	
§ 63.10(e)(3)(ii) through (e)(3)(viii)	Yes.	
§ 63.10(f)	Yes.	
§ 63.11(a) through (e)	Yes.	
§ 63.12(a) through (c)	Yes.	
§ 63.13(a) through (c)	Yes.	
§ 63.14(a) through (q)	Yes.	
§ 63.15(a) and (b)	Yes.	

[FR Doc. 2012–16806 Filed 8–15–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 159 August 16, 2012

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Six West Texas Aquatic Invertebrate Species and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0029; 4500030113]

RIN 1018–AX70

Endangered and Threatened Wildlife and Plants; Endangered Status for Six West Texas Aquatic Invertebrate Species and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list as endangered and propose critical habitat for six west Texas aquatic invertebrate species under the Endangered Species Act. These actions are being taken as the result of a court-approved settlement agreement. These are proposed regulations, and if finalized the effect of these regulations will be to conserve the species and protect their habitat under the Endangered Species Act.

DATES: We will accept comments received or postmarked on or before October 15, 2012. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 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* and search for FWS–R2–ES–2012–0029, 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–R2–ES–2012–0029; 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).

The coordinates, or plot points, or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at (*http://www.fws.gov/southwest/es/AustinTexas/*), *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0029, and at the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; by telephone 512–490–0057; or by facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

This document consists of proposed rules to list six west Texas aquatic invertebrate species as endangered and propose critical habitat designations for the six species. The six west Texas aquatic invertebrate species are: Phantom Cave snail *(Pyrgulopsis texana),* Phantom springsnail *(Tryonia cheatumi),* diminutive amphipod *(Gammarus hyalleloides),* Diamond Y Spring snail *(Pseudotryonia adamantina),* Gonzales springsnail *(Tryonia circumstriata),* and Pecos amphipod *(Gammarus pecos).* The current range for the first three species is limited to spring outflows in the San Solomon Springs system near Balmorhea in Reeves and Jeff Davis Counties, Texas. The current range of the latter three species is restricted to spring outflow areas within the Diamond Y Spring system north of Fort Stockton in Pecos County, Texas.

Why we need to publish a rule. 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. In this proposal we are explaining why these six species warrant protection under the Endangered Species Act. Five of the six species of aquatic invertebrates are currently identified as candidates for listing based on threats to their habitat. The table below summarizes the status of each species:

Species	Present range	Status of species
Phantom Cave snail	San Solomon Spring system (four springs)	common in a very restricted range.
Phantom Lake springsnail	San Solomon Spring system (four springs)	very rare in a very restricted range.
diminutive amphipod	San Solomon Spring system (four springs)	common in a very restricted range.
Diamond Y Spring snail	Diamond Y Spring system (two springs)	very rare in a very restricted range.
Gonzales springsnail	Diamond Y Spring system (two springs)	very rare in a very restricted range.
Pecos amphipod	Diamond Y Spring system (two springs)	common in a very restricted range

These rules propose that all six of these species should be listed as endangered. We are proposing a listing status of endangered for these six species of aquatic invertebrates from west Texas.

The Endangered Species Act provides the basis for our action. Under the Endangered Species Act, we can determine that a species is endangered or threatened based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We are proposing that all six species are endangered by the combined effects of:

- Habitat loss and degradation of aquatic resources, particularly the current and ongoing decline in spring flows that support the habitat of all the species, and the potential for future water contamination at the Diamond Y Spring system.
- Inadequate existing regulatory mechanisms that allow significant threats such as groundwater withdrawal.
- Other natural or manmade factors, including the presence of nonnative snails and the small, reduced ranges of the species.

These rules also propose designation of critical habitat for each of the six species. Under the Endangered Species Act, we designate specific areas as

critical habitat to foster conservation of listed species. Future actions funded, permitted, or otherwise carried out by Federal agencies will be reviewed to ensure they do not adversely modify critical habitat. Critical habitat does not affect private actions on private lands. We are proposing the following areas in Texas as critical habitat for Phantom Cave snail, Phantom springsnail, and diminutive amphipod:

Critical habitat unit	Land ownership by type	Size of unit in hectares (acres)
San Solomon Spring, Reeves County	State—Texas Parks and Wildlife Department	1.8 (4.4)
Giffin Spring, Reeves County	Private	0.7 (1.7)
East Sandia Spring, Reeves County	Private—The Nature Conservancy	1.2 (3.0)
Phantom Lake Spring, Jeff Davis County	Federal—Bureau of Reclamation	0.02 (0.05)
Total		3.7 (9.2)

Note: Area sizes may not sum due to rounding.

We are proposing the following areas as critical habitat for Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod:

Critical habitat unit	Land ownership by type	Size of unit in hectares (acres)
Diamond Y Spring System, Pecos County	Private—The Nature Conservancy	178.6 (441.4)
Total		178.6 (441.4)

We are preparing an economic analysis. We are preparing an economic analysis of the proposed designations of critical habitat to allow for consideration of the economic impacts of the proposed designations of critical habitat. We will publish an announcement and seek public comments on the draft economic analysis when it is completed.

We will request peer review of the methods used in our proposal. We are seeking comments from independent specialists with scientific expertise in these species or related fields. We have invited these peer reviewers to comment on the scientific information and methods that we used in making this proposal. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

We are seeking public comment on these proposed rules. Anyone is welcome to comment on our proposal or provide additional information on the proposal that we can use in making a final determination on the status of these species. Please submit your comments and materials concerning these proposed rules by one of the methods listed in the **ADDRESSES** section. Within 1 year following the publication of this proposal, we will publish in the **Federal Register** a final determination to list one or more of these species as threatened or endangered, or withdraw the proposals if new information is provided that supports that decision.

Public Comments

We intend that any final action resulting from these proposed rules 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 the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning these proposed rules. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

(5) 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 species from human activity, the degree of 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.

(6) Specific information on:

(a) The amount and distribution of habitat for the six west Texas aquatic invertebrates;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on the six west Texas aquatic invertebrates and proposed critical habitat.

(9) 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 or families, and the benefits of including or excluding areas that exhibit these impacts.

(10) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of

potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(11) Whether the benefits of exclusion outweigh the benefits of including the area proposed as critical habitat around San Solomon Spring at Balmorhea State Park based on the existing habitat conservation plan or other relevant factors.

(12) 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.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning these proposed rules 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.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing these proposed rules, 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, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

We first proposed the Phantom Cave snail and Phantom springsnail as endangered species on April 28, 1976 (41 FR 17742). At that time, the Phantom Cave snail *(Pyrgulopsis texana)* was referred to as the Reeves County snail *(Cochliopa texana),* and the Phantom springsnail was referred to as the Cheatum's snail. The proposal was withdrawn on March 6, 1979 (44 FR 12382), following 1978 amendments to the Act that made additional requirements necessary for designating critical habitat. Both species were added as candidates for listing in the May 22, 1984, Notice of Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21664). At that time they were categorized as Category 2 Candidates, which meant that we had information that proposed listing is possibly appropriate, but conclusive data on biological vulnerability and threats was not available to support a proposed rule at the time. They remained so designated in our subsequent annual Candidate Notices of Review (54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; and 59 FR 58982, November 15, 1994). In the February 28, 1996, Notice (61 FR 7596), we discontinued the designation of Category 2 species as candidates, which removed these two species from the candidate list.

Both species were then added back to the candidate list on October 30, 2001 (66 FR 54808). Species on the candidate list 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. Since 2001, the listing priority number for both species has been a 2, reflecting species with threats that are both imminent and high in magnitude in accordance with our priority guidance published on September 21, 1983 (48 FR 43098). These two snails remained candidates in subsequent Candidate Notices of Review (67 FR 40657, June 13, 2002; 69 FR 24876, May 4, 2004). Both species were also petitioned for listing on May 11, 2004, and were found to be warranted for listing but precluded by higher priority activities in subsequent Candidate Notice of Reviews (70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; and 75 FR 69222, November 10, 2010). The October 26, 2011, Candidate Notice of Review (76 FR 66370) stated that we were working on proposed listing rules for these species.

We identified the Diamond Y Spring snail and Gonzales springsnail as candidates for listing in the January 6, 1989, Endangered or Threatened Wildlife and Plants, Annual Notice of Review (54 FR 554). These snails were designated as Category 1 candidates, indicating we had substantial information to support listing, but a proposed rule was precluded by other listing activities. These two species were included in all of our subsequent annual Candidate Notices of Review even after discontinuing the candidate categories (56 FR 58804, November 21, 1991, and 59 FR 58982, November 15, 1994). From 1996 to 1999 these two species had a listing priority number of 5, reflecting species with high magnitude but nonimminent threats (61 FR 7596, February 28, 1996; 62 FR 49398, September 19, 1997; and 64 FR 57534, October 25, 1999). In 2001 we elevated the listing priority number from 5 to 2 because of a new, imminent threat associated with the introduction of nonnative snails into the species' habitat. A listing priority of 2 indicates both high magnitude and imminent threats. Both species have maintained a listing priority of 2 since then (66 FR 54808, October 30, 2001; 67 FR 40657, June 13, 2002; and 69 FR 24876, May 4, 2004). These two species were also petitioned for listing on May 11, 2004, and were found to be warranted for listing but precluded by higher priority activities in subsequent Candidate Notice of Reviews (70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; and 75 FR 69222, November 10, 2010). The October 26, 2011, Candidate Notice of Review (76 FR 66370) stated that we were working on proposed listing rules for these species.

We identified the diminutive amphipod and Pecos amphipod as Category 2 candidate species for listing in the May 22, 1984, Notice of Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21664). They remained so designated in our subsequent annual Candidate Notices of Review (54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; and 59 FR 58982, November 15, 1994). In the February 28, 1996, Notice (61 FR 7596), we discontinued the designation of Category 2 species as candidates, which removed these two species from the candidate list. The diminutive amphipod was added back to the candidate list on May 11, 2005 (70 FR 24870), and has remained a candidate with a listing priority number of 2 (reflecting both high-magnitude and imminent threats) since that time (71 FR 53756, September 12, 2006; 72 FR

69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; and 75 FR 69222, November 10, 2010). The October 26, 2011, Candidate Notice of Review (76 FR 66370) stated that we were working on a proposed listing rule for the diminutive amphipod.

The Pecos amphipod was not included in recent candidate notices along with the other species in this proposal because of taxonomic uncertainties, which have since been resolved. In the past it was unclear whether this species range was limited to Diamond Y Spring. Recent genetic research has confirmed that the species is endemic to Diamond Y Spring (see full discussion below under *Taxonomy, Distribution, and Abundance of Amphipods,* Pecos Amphipod). The Pecos amphipod was included in the June 25, 2007, petition by WildEarth Guardians to the Service seeking the listing of 475 species in the southwestern United States. On January 6, 2009, we published a partial 90-day finding of the petition for listing 475 species which included a finding that the petition did not present substantial scientific or commercial information indicating that the listing of the Pecos amphipod may be warranted (74 FR 419). During our current review of the other species endemic to the Diamond Y Spring system, we reviewed the status of the Pecos amphipod. Based on the results of that review, we are proposing to list it as endangered.

Background

We intend to discuss below only those topics directly relevant to the consideration of the listing of the six west Texas aquatic invertebrates as endangered and proposed critical habitat designations. We have organized this **Background** section into three parts. The first part is a general description of the two primary spring systems where the six species occur. The second part is a general description of the life history and biology of the four snail species, followed by specific biological information on each of the four snail species. The third part is a general description of the life history and biology of the two amphipod species, followed by specific biological information on each of the two amphipod species.

Description of Chihuahuan Desert Springs Inhabited by Invertebrate Species

The six west Texas aquatic invertebrate species (Phantom Cave snail, Phantom springsnail, diminutive amphipod, Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod) occur within a relatively small area of the Chihuahuan Desert of the Pecos River drainage basin of west Texas. The habitats of these species are now isolated spring systems in expansive carbonate (limestone) deposit. The region includes a complex of aquifers (underground water systems) where the action of water on soluble rocks (like limestone and dolomite) has formed abundant ''karst'' features such as sinkholes, caverns, springs, and underground streams. These hydrogeological formations provide unique settings where a diverse assemblage of flora and fauna has evolved at the points where the aquifers discharge waters to the surface through spring openings. The isolated limestone and gypsum springs, seeps, and wetlands located in this part of west Texas provide the only known habitats for several endemic species of fish, plants, mollusks, and crustaceans, including the six endemic aquatic invertebrate species addressed in these proposed rules.

In the Chihuahuan Desert, spring-adapted aquatic species are distributed in isolated, geographically separate populations. They likely evolved into distinct species from parent species that once enjoyed a wider distribution during wetter, cooler climates of the Pleistocene epoch (about 10,000 to 2.5 million years before present). As ancient lakes and streams dried during dry periods (since the Late Pleistocene, within about the last 100,000 years), aquatic species in this region became patchily distributed across the landscape as geographically isolated populations exhibiting a high degree of endemism (species found only in a particular region, area, or spring). Such speciation through divergence has been reported for these species (Gervasio *et al.* 2004, p. 521; Brown *et al.* 2008, pp. 486–487; Seidel *et al.* 2009, p. 2304).

San Solomon Spring System

In these proposed rules we reference the San Solomon Spring system to include four different existing spring outflows: San Solomon Spring, Giffin Spring, Phantom Lake Spring, and East Sandia Spring. The springs in this area are also commonly referred to by some authors as Toyah Basin springs or Balmorhea area springs. All of the springs historically drained into Toyah Creek, an intermittent tributary of the Pecos River that is now dry except following large rainfall events. All four springs are located in proximity to one another; it is about 13 kilometers (km) (8 miles (mi)) between the farthest two (East Sandia Spring to Phantom Lake Spring). Brune (1981, pp. 258–259, 382–386) provides a brief overview of each of these springs and documents their declining flows during the early and middle twentieth century.

The San Solomon Spring system is located in the Chihuahuan Desert of west Texas at the foothills of the Davis Mountains near Balmorhea, Texas. Phantom Lake Spring is in Jeff Davis County (on the county boundary with Reeves County), while the other major springs in this system are in Reeves County. In addition to being an important habitat for rare aquatic fauna, area springs have served for centuries as an important source of irrigation water for local farming communities. They are all located near the small town of Balmorhea (current population of less than 500 people) in west Texas. The area is very rural with no nearby metropolitan centers. Land ownership in the region is mainly private, except as described below around the spring openings, and land use is predominantly dry-land ranching with some irrigated farmland.

The base flows from all of these springs are thought to ultimately originate from a regional groundwater flow system. Studies show that groundwater moves through geologic faults from the Salt Basin northwest of the Apache and Delaware Mountains, located 130 km (80 mi) or more to the west of the springs (Sharp 2001, pp. 42–45; Angle 2001, p. 247; Sharp *et al.* 2003, pp. 8–9; Chowdhury *et al.* 2004, pp. 341–342; Texas Water Development Board 2005, p. 106). The originating groundwater and spring outflow are moderately to highly mineralized and appear to be of ancient origin, with the water being estimated at 10,000 to 18,000 years old (Chowdhury *et al.* 2004, p. 340; Texas Water Development Board 2005, p. 89). The Salt Basin Bolson aquifer is part of the larger West Texas Bolsons and is made up of connected sub-basins underlying Wild Horse, Michigan, Lobo, and Ryan Flats, in the middle and southern Salt Basin Valley in Texas (Angle, 2001, p. 242). (The term bolson is of Spanish origin and refers to a flat-floored desert valley that drains to a playa or flat.) These aquifers, which support the base flows (flows not influenced by seasonal rainfall events) of the San Solomon Spring system, receive little to no modern recharge from precipitation (Scanlon *et al.* 2001, p. 28; Beach *et al.* 2004, pp. 6–9, 8–9). Studies of the regional flow system indicate groundwater may move from south to north through the Salt Basin from Ryan to Lobo to Wild Horse Flats before being discharged through the Capitan

Formation, into the Lower Cretaceous rocks (older than Pleistocene) via large geologic faults then exiting to the surface at the springs (LaFave and Sharp 1987, pp. 7–12; Angle 2001, p. 247; Sharp 2001, p. 42–45; Chowdhury *et al.* 2004, pp. 341–342; Beach *et al.* 2004, Figure 4.1.13, p. 4–19, 4–53). Chemical analysis and hydrogeological studies support this hypothesis, and the water elevations throughout these parts of the Salt Basin Bolson aquifer are higher in elevation than the discharge points at the springs (Chowdhury *et al.* 2004, p. 342).

In contrast to the base flows, the springs also respond with periodic short-term increases in flow rates following local, seasonal rainstorms producing runoff events through recharge areas from the Davis Mountains located to the southwest of the springs (White *et al.* 1941, pp. 112–119; LaFave and Sharp 1987, pp. 11–12; Chowdhury *et al.* 2004, p. 341). These freshwater recharge events provide very temporary increases in spring flows, sometimes resulting in flow spikes many times larger than the regular base flows. The increased flows are short-lived until the local stormwater recharge is drained away and spring flows return to base flows supported by the distant aquifers. Historically, many of the springs in this spring system were likely periodically interconnected following storm events with water flowing throughout the Toyah Creek watershed. In recent times, however, manmade structures altered the patterns of spring outflows and stormwater runoff, largely isolating the springs from one another except through irrigation canals.

San Solomon Spring is by far the largest single spring in the Toyah Basin (Brune 1981, p. 384). The artesian spring issues from the lower Cretaceous limestone at an elevation of about 1,008 meters (m) (3,306 feet (ft)). Brune (1981, p. 385) reported spring flows in the range of 1.3 to 0.8 cubic meters per second (cms) (46 to 28 cubic feet per second (cfs)) between 1900 and 1978 indicating an apparent declining trend. Texas Water Development Board (2005, p. 84) studies reported an average flow rate of about 0.85 cms (30 cfs) from data between 1965 to 2001 with a calculated slope showing a slight decline in discharge.

San Solomon Spring now provides the water for the large, unchlorinated, flow-through swimming pool at Balmorhea State Park and most of the irrigation water for downstream agricultural irrigation by the Reeves County Water Improvement District No. 1 (District). The swimming pool is concrete on the sides and natural substrates on the bottom and was originally constructed in 1936. Balmorhea State Park is owned and managed by Texas Parks and Wildlife Department and encompasses about 19 hectares (ha) (46 acres (ac)) located about 6 km (4 mi) west of Balmorhea in the historic community of Toyahvale. The Park provides recreational opportunities of camping, wildlife viewing, and swimming and scuba diving in the pool. The District holds the water rights for the spring which is channeled through an extensive system of concrete-lined irrigation channels, and much of the water is stored in nearby Lake Balmorhea and delivered through canals for flood irrigation on farms down gradient (Simonds 1996, p. 2).

Balmorhea State Park's primary wildlife resource focus is on conservation of the endemic aquatic species that live in the outflow of San Solomon Spring (Texas Parks and Wildlife Department 1999, p. 1). Texas Parks and Wildlife Department maintains two constructed ciénegas that are flow-through, earth-lined pools in the park to simulate more natural aquatic habitat conditions for the conservation of the rare species, including the Phantom Cave snail, Phantom springsnail, and diminutive amphipods. (Ciénega is a Spanish term that describes a spring outflow that is a permanently wet and marshy area.) San Solomon Spring is also inhabited by two federally listed fishes, Comanche Springs pupfish *(Cyprinodon elegans)* and Pecos gambusia *(Gambusia nobilis).* No nonnative fishes are known to occur in San Solomon Spring, but two nonnative aquatic snails, red-rim melania *(Melanoides tuberculata)* and quilted melania *(Tarebia granifera),* do occur in the spring outflows and are a cause for concern for the native aquatic invertebrate species.

Giffin Spring is on private property less than 1.6 km (1.0 mi) west of Balmorhea State Park, across State Highway 17. The spring originates from an elevation similar to San Solomon Spring. Brune (1981, p. 385) reported flow from Giffin Spring ranging from 0.07 to 0.17 cms (2.3 to 5.9 cfs) between 1919 and 1978, with a gradually declining trend. During calendar year 2011, Giffin Spring flow rates were recorded between 0.10 and 0.17 cms (3.4 and 5.9 cfs) (U.S. Geological Survey 2012, p. 1). Giffin Spring water flows are captured in irrigation earthen channels for agricultural use. Giffin Spring is also inhabited by the federally listed Comanche springs pupfish and Pecos gambusia, and the only nonnative aquatic species of concern there is the red-rim melania.

Phantom Lake Spring is at the base of the Davis Mountains about 6 km (4 mi) west of Balmorhea State Park at an elevation of 1,080 m (3,543 ft). The outflow originates from a large crevice on the side of a limestone outcrop cliff. The 7-ha (17-ac) site around the spring and cave opening is owned by the U.S. Bureau of Reclamation. Prior to 1940 the recorded flow of this spring was regularly exceeding 0.5 cms (18 cfs). Outflows after the 1940s were immediately captured in concrete-lined irrigation canals and provided water for local crops before connecting to the District's canal system in Balmorhea State Park. Flows declined steadily over the next 70 years until ceasing completely in about the year 2000 (Brune 1981, pp. 258–259; Allan 2000, p. 51; Hubbs 2001, p. 306). The aquatic habitat at the spring pool has been maintained by a pumping system since then. Phantom Lake Spring is also inhabited by the two federally listed fishes, Comanche Springs pupfish and Pecos gambusia, and the only nonnative aquatic species of concern there is the red-rim melania.

East Sandia Spring is the smallest spring in the system located in Reeves County in the community of Brogado approximately 3 km (2 mi) northeast of the town of Balmorhea and 7.7 km (4.8 mi) northeast of Balmorhea State Park. The spring is within a 97-ha (240-ac) preserve owned and managed by The Nature Conservancy—a private nonprofit conservation organization (Karges 2003, pp. 145–146). In contrast to the other springs in the San Solomon Spring system that are derived directly from a deep underground regional flow system, East Sandia Spring discharges from alluvial sand and gravel from a shallow groundwater source at an elevation of 977 m (3,224 ft) (Brune 1981, p. 385; Schuster 1997, p. 92). Water chemistry at East Sandia Spring indicates it is not directly hydrologically connected with the other springs in the San Solomon Spring system in the nearby area (Schuster 1997, pp. 92–93). Historically there was an additional, smaller nearby spring outlet called West Sandia Spring. Brune (1981, pp. 385–386) reported the combined flow of East and West Sandia Springs as declining, with measurements ranging from 0.09 to 0.02 cms (3.2 to 0.7 cfs) between 1932 and 1976. In 1976 outflow from East Sandia was 0.01 cms (0.5 cfs) of the total 0.02 cms (0.7 cfs) of the two springs. In 1995 and 1996 Schuster (1997, p. 94) reported flows from both springs ranging from 0.12 to 0.01 cms (4.07 cfs to 0.45 cfs),

with an average of 0.05 cms (1.6 cfs). The outflow waters from the spring discharge to an irrigation canal within a few hundred meters from its source. East Sandia Spring is also inhabited by two federally listed fishes, Comanche Springs pupfish and Pecos gambusia, as well as the federally endangered Pecos assiminea *(Assiminea pecos)* snail and the federally threatened Pecos sunflower *(Helianthus paradoxus).* No nonnative aquatic species of concern are known from East Sandia Spring.

Historically there were other area springs along Toyah Creek that were part of the San Solomon Spring system. Saragosa and Toyah Springs occurred in the town of Balmorhea along Toyah Creek. Brune (1981, p. 386) reported historic base flows of about 0.2 cms (6 cfs) in the 1920s and 1940s, declining to about 0.06 cms (2 cfs) in the 1950s and 1960s, and no flow was recorded in 1978. Brune (1981, p. 385) reported that the flow from West Sandia Spring was about 0.01 cms (0.2 cfs) in 1976, after combined flows from East and West Sandia Springs had exceeded 0.07 cms (2.5 cfs) between the 1930s and early 1960s. The Texas Water Development Board (2005, p. 12) reported West Sandia and Saragosa Springs did not discharge sufficient flow for measurement. Karges (2003, p. 145) indicated West Sandia has only intermittent flow and harbors no aquatic fauna. It is unconfirmed whether the six aquatic invertebrates discussed in this document occurred in these now dry spring sites, but given their current distribution in springs located upstream and downstream of these historic springs, we assume that they probably did. However, because these springs have been dry for many decades, they no longer provide habitat for the aquatic invertebrates.

Diamond Y Spring System

The Diamond Y Spring system is within a tributary drainage flowing northeast to the Pecos River. Diamond Y Spring (previously called Willbank Spring) is located about 80 km (50 mi) due east of San Solomon Spring and about 12 km (8 mi) north of the City of Fort Stockton in Pecos County. The Diamond Y Spring system is composed of disjunct upper and lower watercourses, separated by about 1 km (0.6 mi) of dry stream channel.

The upper watercourse is about 1.5 km (0.9 mi) long and starts with the Diamond Y Spring head pool, which drains into a small spring outflow channel. The channel enters a broad valley and braids into numerous wetland areas and is augmented by numerous small seeps. The Diamond Y Spring outflow converges with the Leon Creek drainage and flows through a marsh-meadow, where it is then referred to as Diamond Y Draw. All of the small springs and seeps and their outflow comprise the upper watercourse. These lateral water features, often not mapped, are spread across the flat, seasonally wetted area along Diamond Y Draw. Therefore, unlike other spring systems that have a relatively small footprint, aquatic habitat covers a relatively large area along the Diamond Y draw.

The lower watercourse of Diamond Y Draw has a smaller head pool spring, referred to as Euphrasia Spring, with a small outflow stream as well as several isolated pools and associated seeps and wetland areas. The total length of the lower watercourse is about 1 km (0.6 mi) and has extended below the bridge at State Highway 18 during wetter seasons in the past. The upper watercourse is only hydrologically connected to the lower watercourse by surface flows during rare large rainstorm runoff events. The lower watercourse also contains small springs and seeps laterally separated from the main spring outflow channels.

Virtually all of the Diamond Y Spring area (both upper and lower watercourses and the area in between) occurs on the Diamond Y Spring Preserve, which is owned and managed by The Nature Conservancy. The Diamond Y Spring Preserve is 1,603 ha (3,962 ac) of contiguous land around Diamond Y Draw. The surrounding watershed and the land area over the contributing aquifers are all privately owned and managed as ranch land and have been developed for oil and gas extraction. In addition, a natural gas processing plant is located within 0.8 km (0.5 mi) upslope of the headpool in the upper watercourse of Diamond Y Spring. Diamond Y Spring is also inhabited by two federally listed fishes, Leon Springs pupfish *(Cyprinodon bovinus)* and Pecos gambusia, as well as the federally endangered Pecos assiminea snail and the federally threatened Pecos sunflower. The only nonnative species of concern at Diamond Y Spring is the red-rim melania, which is only known to occur in the upper watercourse.

Studies by Boghici (1997, p. *v*) indicate that the spring flow at Diamond Y Spring originates chiefly from the Rustler aquifer waters underlying the Delaware Basin to the northwest of the spring outlets (Boghici and Van Broekhoven 2001, p. 219). The Rustler aquifer underlies an area of approximately 1,200 sq km (480 sq mi) encompassing most of Reeves County and parts of Culberson, Pecos, Loving, and Ward Counties (Boghici and Van Broekhoven 2001, p. 219). Much of the water contains high total dissolved solids (Boghici and Van Broekhoven 2001, p. 219) making it difficult for agricultural or municipal use; therefore, the aquifer has experienced only limited pumping in the past (Mace 2001, pp. 7–9).

Other springs in the area may have once provided habitat for the aquatic species but limited information is generally available on historic distribution of the invertebrates. Leon Springs, a large spring that historically occurred about 14 km (9 miles) upstream along Leon Creek, historically discharged about 0.7 cms (25 cfs) in 1920, 0.5 cms (18 cfs) in the 1930s, 0.4 cms (14 cfs) in the 1940s, and no discharge from 1958 to 1971 (Brune 1981, p. 359). Nearby groundwater pumping to irrigate farm lands began in 1946, which lowered the contributing aquifer by 40 m (130 feet) by the 1970s and resulted in the loss of the spring. The only circumstantial evidence that any of the three invertebrates that occur in nearby Diamond Y Spring may have occurred in Leon Springs is that the spring is within the same drainage and an endemic fish, Leon Springs pupfish, once occurred in both Diamond Y and Leon Springs.

Comanche Springs is another large historic spring located in the City of Fort Stockton. Prior to the 1950s, this spring discharged more than 1.2 cms (42 cfs) (Brune 1981, p. 358) and provided habitat for rare species of fishes and invertebrates. As a result of groundwater pumping for agriculture, the spring ceased flowing by 1962 (Brune 1981, p. 358), eliminating all aquatic-dependent plants and animals (Scudday 1977, pp. 515–518; Scudday 2003, pp. 135–136). Although we do not have data confirming that Comanche Springs was inhabited by all of the Diamond Y Spring species, there is evidence that at least the two snails (Diamond Y Spring snail and Gonzales springsnail) occurred there at some time in the past (see *Taxonomy, Distribution, Abundance, and Habitat of Snails,* below).

Life History and Biology of Snails

The background information presented in this section applies to all four species of snails in these proposed rules: Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, and Gonzales springsnail. All four of these snails are in the family Hydrobiidae and are strictly aquatic with respiration occurring through an internal gill. These hydrobiid snails (snails in the family Hydrobiidae)

typically reproduce several times during the spring to fall breeding season (Brown 1991, p. 292) and are sexually dimorphic (males and females are shaped differently), with females being characteristically larger and longer-lived than males. Snails in the *Pyrgulopsis* genus (Phantom Cave snail) reproduce through laying a single small egg capsule deposited on a hard surface (Hershler 1998, p. 14). The other three snail species are ovoviviparous, meaning the larval stage is completed in the egg capsule, and upon hatching, the snails emerge into their adult form (Brusca and Brusca 1990, p. 759; Hershler and Sada 2002, p. 256). The lifespan of most aquatic snails is thought to be 9 to 15 months (Taylor 1985, p. 16; Pennak 1989, p. 552).

All of these snails are presumably fine-particle feeders on detritus (organic material from decomposing organisms) and periphyton (mixture of algae and other microbes attached to submerged surfaces) associated with the substrates (mud, rocks, and vegetation) (Allan 1995, p. 83; Hershler and Sada 2002, p. 256; Lysne *et al.* 2007, p. 649). Dundee and Dundee (1969, p. 207) found diatoms (a group of single-celled algae) to be the primary component in the digestive tract, indicating they are a primary food source.

These hydrobiid snails from west Texas occur in mainly flowing water habitats such as small springs, seeps, marshes, spring pools, and their outflows. Proximity to spring vents, 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 (Hershler 1994, p. 68; Hershler 1998, p. 11; Hershler and Sada 2002, p. 256; Martinez and Thome 2006, p. 14). Several habitat parameters of springs, such as temperature, substrate type, dissolved carbon dioxide, dissolved oxygen, conductivity, and water depth have been shown to influence the distribution and abundance of other related species of springsnails (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). Dissolved salts such as calcium carbonate may also be important factors because they are essential for shell formation (Pennak 1989, p. 552). Hydrobiid snails as a group are considered sensitive to water quality changes, and each species is usually found within relatively narrow habitat parameters (Sada 2008, p. 59).

Native fishes have been shown to prey upon these snails (Winemiller and Anderson 1997, pp. 209–210; Brown *et al.* 2008, p. 489), but it is unknown to what degree predatory pressure may play a role in controlling population abundances or influencing habitat use. There are currently no nonnative fishes in the springs where the species occur, so there is no unnatural predation pressure from fish suspected.

Because of their small size and dependence on water, significant dispersal (in other words, movement between spring systems) does not likely occur, although on rare occasions aquatic snails have been transported by becoming attached to the feathers and feet of migratory birds (Roscoe 1955, p. 66; Dundee *et al.* 1967, pp. 89–90). In general, the species have little capacity to move beyond their isolated aquatic environments.

Taxonomy, Distribution, Abundance, and Habitat of Snails

Phantom Cave Snail *(Pyrgulopsis texana* Pilsbry 1935)

The Phantom Cave snail was first described by Pilsbry (1935, pp. 91–92). It is a very small snail, measuring only 0.98 to 1.27 millimeters (mm) (0.04 to 0.05 inches (in)) long (Dundee and Dundee 1969, p. 207). Until 2010, the species was placed in the genus *Cochliopa* (Dundee and Dundee 1969, p. 209; Taylor 1987, p. 40). Hershler *et al.* (2010, pp. 247–250) reviewed the systematics of the species and transferred Phantom Cave snail to the genus *Pyrgulopsis* after morphological and mitochondrial DNA analysis. Hershler *et al.* (2010, p. 251) also noted some minimal differences in shell size (individuals were smaller at East Sandia Spring) and mitochondrial DNA sequence variation among populations of Phantom Cave snails in different springs. The low level of variation (small differences) among the populations did not support recognizing different conservation units for the species. Hershler *et al.* (2010, p. 251) expected this small difference among the populations because of their proximity (separated by 6 to 13 km (4 to 8 mi)) and the past connectedness of the aquatic habitats by Toyah Creek that would have allowed mixing of the populations before human alterations and declining flows. Based on these published studies we conclude that Phantom Cave snail is a listable entity under the Act.

The Phantom Cave snail only occurs in the four remaining desert spring outflow channels associated with the San Solomon Spring system (San Solomon, Phantom, Giffin, and East Sandia springs). Hershler *et al.* (2010, p. 250) did not include Giffin Spring in this species distribution, but unpublished data from Lang (2011, p. 5) confirms that the species is also found in Giffin Spring outflows as well as the other three springs in the San Solomon Spring system. The geographic extent of the historic range for the Phantom Cave snail was likely not larger than the present range, but the species may have occurred in additional small springs contained within the current range of the San Solomon Spring system, such as Saragosa and Toyah Springs. It likely also had a larger distribution within Phantom Lake Spring and San Solomon Spring before the habitat there was modified and reduced in conversion of spring outflow channels into irrigation ditches.

Within its current, limited range, Phantom Cave snails can exist in very high densities. Dundee and Dundee (1969, pp. 207) described the abundance of the Phantom Cave snails at Phantom Lake Spring in 1968 as persisting ''in such tremendous numbers that the bottom and sides of the canal appear black from the cover of snails.'' Today the snails are limited to the small pool at the mouth of Phantom Cave and cannot be found in the irrigation canal downstream. At San Solomon Spring, Taylor (1987, p. 41) reported the Phantom Cave snail was abundant and generally distributed in the canals from 1965 to 1981. Density data and simple population size estimates based on underwater observations indicate there may be over 3.8 million individuals of this species at San Solomon Spring (Bradstreet 2011, p. 55). Lang (2011) also reported very high densities (not total population estimates) of Phantom Cave snails (with ± standard deviations): San Solomon Spring from 2009 sampling in the main canal, 71,740 per sq m (6,672 per sq ft; ±47,229 per sq m, ±4,393 per sq ft); Giffin Spring at road crossing in 2001, 4,518 per sq m (420 per sq ft; ±4,157 per sq m, ±387 per sq ft); East Sandia Spring in 2009, 41,215 per sq m (3,832 per sq ft; ±30,587 per sq m, ±2,845 per sq ft); and Phantom Lake Spring in 2009, 1,378 per sq m (128 per sq ft; ±626 per sq m, ±58 per sq ft). From these data, it is evident that when conditions are favorable Phantom Cave snails can reach tremendous population sizes in very small areas.

Phantom Cave snails are found concentrated near the spring source (Hershler *et al.* 2010, p. 250) and can occur as far as a few hundred meters downstream of a large spring outlet like San Solomon Spring. Despite its common name, it has not been found

within Phantom Cave proper, but only within the outflow of Phantom Lake Spring. Bradstreet (2011, p. 55) found the highest abundances of Phantom Cave snails at San Solomon Spring outflows in the high-velocity areas in the irrigation canals and the lowest abundances in the San Solomon Ciénega. The species was not collected from the newest constructed ciénega in 2010. Habitat of the species is found on both soft and firm substrates on the margins of spring outflows (Taylor 1987, p. 41). They are also commonly found attached to plants, particularly in dense stands of submerged vegetation *(Chara* sp.). Field and laboratory experiments have suggested Phantom Cave snails prefer substrates harder and larger in size (Bradstreet 2011, p. 91).

Phantom Springsnail *(Tryonia cheatumi* Pilsbry 1935)

The Phantom springsnail was first described by Pilsbry (1935, p. 91) as *Potamopyrgus cheatumi.* The species was later included in the genus *Lyrodes* and eventually placed in the genus *Tryonia* (Taylor 1987, pp. 38–39). It is a small snail measuring only 2.9 to 3.6 mm (0.11 to 0.14 in) long (Taylor 1987, p. 39). Systematic studies of *Tryonia* snails in the Family Hydrobiidae using mitochondrial DNA sequences and morphological characters confirms the species is a ''true *Tryonia,''* in other words, it is appropriately classified in the genus *Tryonia* (Hershler *et al.* 1999, p. 383; Hershler 2001, p. 6; Hershler *et al.* 2011, pp. 5–6). Based on these published studies, we conclude that Phantom springsnail is a listable entity under the Act.

The Phantom springsnail only occurs in the four remaining desert spring outflow channels associated with the San Solomon Spring system (San Solomon, Phantom, Giffin, and East Sandia springs) (Taylor 1987, p. 40; Allan 2011, p. 1; Lang 2011, entire). The historic range for the Phantom springsnail was likely not larger than present, but the species may have occurred in other springs within the San Solomon Spring system, such as Saragosa and Toyah Springs. It likely also had a wider distribution within Phantom Lake Spring and San Solomon Spring before the habitat there was modified and reduced.

Within its current, limited range, Phantom springsnails can have moderate densities of abundance, but have never been recorded as high as the Phantom Cave snail. In the 1980s, Taylor (1987, p. 40) described Phantom springsnails as abundant in the outflow ditch several hundred meters downstream of Phantom Lake Spring. The snails are now limited to low densities in the small pool at the mouth of Phantom Cave and cannot be found in the irrigation canal downstream as it does not have water (Allan 2009, p. 1). Density data and simple population size estimates based on underwater observations indicate there may be over 460,000 individuals of this species at San Solomon Spring (Bradstreet 2011, p. 55). Lang (2011) reports the following densities (not population estimates) of Phantom springsnails (with ± standard deviations): San Solomon Spring from 2009 sampling in the main canal, 11,681 per sq m (1,086 per sq ft; ±11,925 per sq m, ±1,109 per sq ft); Giffin Spring at road crossing in 2001, 3,857 per sq m (358 per sq ft; ±6,110 per sq m, ±568 per sq ft); East Sandia Spring in 2009, 65,845 per sq m (6,123 per sq ft; ±60,962 per sq m, ±5,669 per sq ft); and Phantom Lake Spring in 2009, 31,462 per sq m (2,926 per sq ft; ±20,251 per sq m, ±1,883 per sq ft). Phantom springsnails can reach high population sizes in very small areas with favorable conditions.

Phantom springsnails are usually found concentrated near the spring source but once occurred as far as a few hundred meters downstream when Phantom Lake Spring was a large flowing spring (Dundee and Dundee 1969, p. 207; Taylor 1987, p. 40). The species is most abundant in the swimming pool at Balmorhea State Park, but has not been found in either of the constructed ciénegas at the Park in 2010 and 2011 (Allan 2011, p. 3; Bradstreet 2011, pp. 55). The species is found on both soft and firm substrates on the margins of spring outflows (Taylor 1987, p. 41), and they are also commonly found attached to plants, particularly in dense stands of submerged vegetation (*Chara* sp.).

Diamond Y Spring Snail *(Pseudotryonia adamantina* Taylor 1987)

The Diamond Y Spring snail was first described by Taylor (1987, p. 41) as *Tryonia adamantina.* It is a small snail measuring only 2.9 to 3.6 mm (0.11 to 0.14 in) long (Taylor 1987, p. 41). Systematic studies (Hershler *et al.*1999, p. 377; Hershler 2001, pp. 7, 16) of these snails have been conducted using mitochondrial DNA sequences and morphological characters. These analyses resulted in the Diamond Y Spring snail being reclassified into the new genus *Pseudotryonia* (Hershler 2001, p. 16). Based on these published studies, we conclude that Diamond Y Spring snail is a listable entity under the Act.

Taylor (1985, p. 1; 1987, p. 38) was the earliest to document the distribution and abundance of aquatic snails in the Diamond Y Spring system, referencing surveys from 1968 to 1984. In 1968, the Diamond Y Spring snail was considered abundant in the outflow of Diamond Y Spring in the upper watercourse for about 1.6 km (1 mi) downstream of the spring head pool, but by 1984 the species was present in only areas along stream margins (near the banks) (Taylor 1985, p. 1). Average density estimates in 1984 at 12 of 14 sampled sites in the upper watercourse ranged from 500 to 93,700 individuals per sq m (50 to 8,700 per sq ft), with very low densities in the upstream areas near the headspring (Taylor 1985, p. 25). However, the Diamond Y Spring snail was largely absent from the headspring and main spring flow channel where it had been abundant in 1968 surveys (Taylor 1985, p. 13). Instead it was most common in small numbers along the outflow stream margins and lateral springs (Taylor 1985, pp. 13–15). Over time, the distribution of the Diamond Y Spring snail in the upper watercourse has continued to recede so that it is no longer found in the outflow channel at all but may be restricted to small lateral spring seeps disconnected from the main spring flow channel (Landye 2000, p. 1; Echelle *et al.* 2001, pp. 24–25). Surveys by Lang (2011, pp. 7–8) in 2001 and 2003 found only 2 and 7 individuals, respectively, in the outflow channel of Diamond Y Spring. Additional surveys in 2009 and 2010 (Ladd 2010, p. 18; Lang 2011, p. 12) did not find Diamond Y Spring snails in the upper watercourse. However, neither researcher surveyed extensively in the lateral spring seeps downstream from the main spring outflow.

The Diamond Y Spring snail was not previously reported from the lower watercourse until first detected there in 2001 at the outflow of Euphrasia Spring (Lang 2011, p. 6). It was confirmed there again in 2009 (Lang 2011, p. 13) and currently occurs within at least the first 50 m (160 feet) in the outflow channel of Euphrasia Spring (Ladd 2010, p. 18). Ladd (2010, p. 37) roughly estimated the total number of Diamond Y Spring snails in the lower watercourse to be about 35,000 individuals with the highest density reported as 2,500 individuals per sq m (230 per sq ft). Lang (2011, p. 13) estimated densities of Diamond Y Spring snails in 2009 at 16,695 per sq m (1,552 per sq ft; ±18,212 per sq m, ±1,694 per sq ft) in Euphrasia Spring outflow, which suggests a much larger population than that estimated by Ladd (2010, p. 37).

In summary, the Diamond Y Spring snail was historically common in the upper watercourse and absent from the lower watercourse. Currently it is very

rare in the upper watercourse and limited to small side seeps (and may be extirpated), and it occurs in the lower watercourse in the outflow of Euphrasia Spring. The historic distribution of this species may have been larger than the present distribution. Other area springs nearby such as Leon and Comanche Springs may have harbored the species. There is one collection of very old, dead shells of the species that was made from Comanche Springs in 1998 (Worthington 1998, unpublished data) whose identification was recently confirmed as Diamond Y Spring snail (Hershler 2011, pers. comm.). However, because these springs have been dry for more than four decades and shells can remain intact for thousands of years, it is impossible to know how old the shells might be. Therefore, we are unable to confirm if the recent historic distribution included Comanche Springs.

Habitat of the species is primarily soft substrates on the margins of small springs, seeps, and marshes in shallow flowing water associated with emergent bulrush *(Scirpus americanus)* and saltgrass *(Distichlis spicata)* (Taylor 1987, p. 38; Echelle *et al.* 2001, p. 5).

Gonzales Springsnail *(Tryonia circumstriata* Leonard and Ho 1960)

The Gonzales springsnail was first described as a late Pleistocene fossil record, *Calipyrgula circumstriata,* from the Pecos River near Independence Creek in Terrell County, Texas (Leonard and Ho 1960, p. 126). The snail from Diamond Y Spring area was first described as *Tryonia stocktonensis* by Taylor (1987, p. 37). It is a small snail, measuring only 3.0 to 3.7 mm (0.11 to 0.14 in) long. Systematic studies later changed the name to *Tryonia circumstriata,* integrating it with the fossilized snails from the Pecos River (Hershler 2001, p. 7), and confirming the species as a ''true *Tryonia,*'' in other words, it is appropriately classified in the genus *Tryonia* (Hershler *et al.* 2011, pp. 5–6). Based on these published studies, we conclude that Gonzales springsnail is a listable entity under the Act.

Taylor (1985, pp. 18–19; 1987, p. 38) found Gonzales springsnail only in the first 27 m (90 ft) of the outflow from Euphrasia Spring. The species has been consistently found in this short stretch of spring outflow channel since then (Echelle *et al.* 2001, p. 20; Lang 2011, pp. 6, 13). Ladd (2010, pp. 23–24) reported that Gonzales springsnails no longer occurred in the lower watercourse and had been replaced by Diamond Y Spring snails. However, reevaluation of voucher specimens collected by Lang (2011, p. 13) concurrently in 2009 with those by Ladd (2010, p. 14) confirmed the species is still present in the Euphrasia Spring outflow channel of the lower watercourse.

Gonzales springsnail was first reported in the upper watercourse in 1991 during collections from one site in the Diamond Y Spring outflow and one small side seep near the spring head (Fullington and Goodloe 1991, p. 3). The species has since been collected from this area (Lang 2011, pp. 7–9), and Echelle *et al.* (2001, p. 20) found it to be the most abundant snail for the first 430-m (1,400-ft) downstream from the spring head. Ladd (2010, p. 18) also found Gonzales springsnail in the outflow of Diamond Y Spring, but only from 125 to 422 m (410 to 1,384 ft) downstream of the spring head (Ladd 2011, pers. comm.). The Gonzales springsnail appears to have replaced the Diamond Y Spring snail in some of the habitat in the upper watercourse (Brown 2008, p. 489) since 1991.

Taylor (1985, p. 19) calculated densities for Gonzales springsnails in the outflow of Euphrasia Spring in the range of 50,480 to 85,360 individuals per sq m (4,690 to 7,930 individuals per sq ft) and estimated the population size in that 27-m (90-ft) stretch to be at least 162,000 individuals and estimated the total population of over one million individuals as a reasonable estimate. Lang (2011, p. 13) estimated the density of Gonzales springsnails in the Euphrasia Spring outflow to be 3,086 individuals per sq m (287 per sq ft; ±5,061 per sq m, ±471per sq ft). Ladd (2010, p. 37) estimated the population of Gonzales springsnails in the upper watercourse to be only about 11,000 individuals.

As with the Diamond Y Spring snail, the historic distribution of the Gonzales springsnail may have been larger than the present distribution. Other area springs nearby such as Leon and Comanche Springs may have harbored the species. There is one collection of dead shells of the species that was made from Comanche Springs in 1998 (Worthington 1998, unpublished data) whose identification was recently confirmed as Gonzales springsnail (Hershler 2011, pers. comm.). However, because these springs have been dry for more than four decades and shells can remain intact for thousands of years, it is impossible to know how old the shells might be. Therefore, we are unable to confirm if the recent historic distribution included Comanche Springs.

Habitat of the species is primarily soft substrates on the margins of small springs, seeps, and marshes in shallow flowing water associated with emergent bulrush and saltgrass (Taylor 1987, p. 38; Echelle *et al.* 2001, p. 5).

Life History, Biology, and Habitat of Amphipods

The background information presented here applies to both species of amphipods in these proposed rules: diminutive amphipod and Pecos amphipod. These amphipods, in the family Gammaridae, are small freshwater inland crustaceans sometimes referred to as freshwater shrimp. Gammarids commonly inhabit shallow, cool, well-oxygenated waters of streams, ponds, ditches, sloughs, and springs (Smith 2001, p. 574). These bottom-dwelling amphipods feed on algae, submergent vegetation, and decaying organic matter (Smith 2001, p. 572). Amphipod eggs are held within a marsupium (brood pouch) within the female's exoskeleton (Smith 2001, p. 573). Most amphipods complete their life cycle in 1 year and breed from February to October, depending on water temperature (Smith 2001, p. 572). Amphipods form breeding pairs that remain attached for 1 to 7 days at or near the substrate while continuing to feed and swim (Bousfield 1989, p. 1721). They can produce from 15 to 50 offspring, forming a ''brood.'' Most amphipods produce one brood, but some species produce a series of broods during the breeding season (Smith 2001, p. 573).

These two species, diminutive amphipod and Pecos amphipod, are part of a related group of amphipods, referred to as the *Gammarus pecos* species complex, that are restricted to desert spring systems from the Pecos River Basin in southeast New Mexico and west Texas (Cole 1985, p. 93; Lang *et al.* 2003, p. 47; Gervasio *et al.* 2004, p. 521). Similar to the snails, it is thought that these freshwater amphipods are derived from a widespread ancestral marine amphipod that was isolated inland during the recession of the Late Cretaceous sea, about 66 million years ago (Holsinger 1967, pp. 125–133; Lang *et al.* 2003, p. 47). They likely evolved into distinct species during recent dry periods (since the Late Pleistocene, about 100,000 years ago) through allopatric speciation (that is, speciation by geographic separation) following separation and isolation in the remnant aquatic habitats associated with springs (Gervasio *et al.* 2004, p. 528).

Amphipods in the *Gammarus pecos* species complex only occur in desert spring outflow channels on substrates, often within interstitial spaces on and

underneath rocks and within gravels (Lang *et al.* 2003, p. 49) and are most commonly found in microhabitats with flowing water. They are also commonly found in dense stands of submerged vegetation (Cole 1976, p. 80). Because of their affinity for constant water temperatures, they are most common in the immediate spring outflow channels, usually only a few hundred meters downstream of spring outlets.

Amphipods play important roles in the processing of nutrients in aquatic ecosystems and are also considered sensitive to changes in aquatic habitat conditions (for example, stream velocities, light intensity, zooplankton availability, and the presence of heavy metals) and are often considered ecological indicators of ecosystem health and integrity (Covich and Thorpe 1991, pp. 672–673, 679; Lang *et al.* 2003, p. 48). Water chemistry parameters, such as salinity, pH, and temperature, are also key components to amphipod habitats (Covich and Thorpe 1991, pp. 672–673).

Taxonomy, Distribution, and Abundance of Amphipods

Diminutive Amphipod *(Gammarus hyalleloides* Cole 1976)

W.L. Minckley first collected the diminutive amphipod from Phantom Lake Spring in the San Solomon Spring system in 1967, and the species was first formally described by Cole (1976, pp. 80–85). The name comes from the species being considered the smallest of the known North American freshwater *Gammarus* amphipods. Adults generally range in length from 5 to 8 mm (0.20 to 0.24 in).

There has been some disparity in the literature regarding the taxonomic boundaries for the amphipods from the San Solomon Spring system. In Cole's (1985, pp. 101–102) description of the *Gammarus pecos* species complex of amphipods based solely on morphological measurements, he considered the diminutive amphipod to be endemic only to Phantom Lake Spring, and amphipods from San Solomon and Diamond Y Springs were both considered to be the Pecos amphipod *(G. pecos).* This study did not include samples of amphipods from East Sandia or Giffin Springs. However, allozyme electrophoresis data on genetic variation strongly support that the populations from the San Solomon Spring system form a distinct group from the Pecos amphipod at Diamond Y Spring (Gervasio *et al.* 2004, pp. 523–530). Based on these data, we consider the Pecos amphipod to be limited to the Diamond Y Spring system.

The results of these genetic studies also suggested that the three *Gammarus* amphipod populations from San Solomon, Giffin, and East Sandia Springs are a taxonomically unresolved group differentiated from the diminutive amphipod at Phantom Lake Spring (Gervasio *et al.* 2004, pp. 523–530). Further genetic analysis using mitochondrial DNA (mtDNA) by Seidel *et al.* (2009, p. 2309) also indicates that the diminutive amphipod may be limited to Phantom Lake Spring and the *Gammarus* species at the other three springs should be considered a new and undescribed species. However, the extent of genetic divergence measured between these populations is not definitive. For example, the 19-base pair divergence between the population at Phantom Lake Spring and the other San Solomon Spring system populations (Seidel *et al.* 2009, Figure 3, p. 2307) represents about 1.7 percent mtDNA sequence divergence (of the 1,100 base pairs of the mitochondrial DNA sequenced (using the cytochrome c oxidase I (COI) gene). This is a relatively low level of divergence to support species separation, as a recent review of a multitude of different animals (20,731 vertebrates and invertebrates) suggested that the mean mtDNA distances (using the COI gene) between subspecies is 3.78 percent (±0.16) divergence and between species is 11.06 percent (±0.53) divergence (Kartavtsev 2011, pp. 57–58).

Recent evaluations of species boundaries of amphipods from China suggest mtDNA genetic distances of at least 4 percent were appropriate to support species differentiation, and the species they described all exceeded 15 percent divergence (Hou and Li 2010, p. 220). In addition, no species descriptions using morphological or ecological analysis have been completed for these populations, which would be important information in any taxonomic revision (Hou and Li 2010, p. 216). Therefore, the data available does not currently support taxonomically separating the amphipod population at Phantom Lake Spring from the populations at San Solomon, Giffin, and East Sandia Springs into different listable entities under the Act. So, for the purposes of these proposed rules, based on the best available scientific information, we are including all four populations of *Gammarus* amphipods from the San Solomon Spring system as part of the *Gammarus hyalleloides* species (diminutive amphipod), and we consider diminutive amphipod a listable entity under the Act. We recognize that the taxonomy of these populations could change as additional information is collected and further analyses are published.

The diminutive amphipod only occurs in the four springs from the San Solomon Spring system (Gervasio *et al.* 2004, pp. 520–522). There is no available information that the species' historic distribution was larger than the present distribution, but other area springs (such as Saragosa, Toyah, and West Sandia Springs) may have contained the species. However, because these springs have been dry for many decades, if the species historically occurred there, they are now extirpated. There is no opportunity to determine the full extent of the historic distribution of these amphipods because of the lack of historic surveys and collections.

Within its limited range, diminutive amphipod can be very abundant. For example, in May 2001, Lang *et al.* (2003, p. 51) estimated mean densities at San Solomon, Giffin, and East Sandia Springs of 6,833 amphipods per sq m (635 per sq ft; standard deviation ±5,416 per sq m, ±504 per sq ft); 1,167 amphipods per sq m (108 per sq ft; ±730 per sq m, ±68 per sq ft), and 4,625 amphipods per sq m (430 per sq ft; ±804 per sq m, ±75 per sq ft), respectively. In 2009 Lang (2011, p. 11) reported the density at Phantom Lake Spring as 165 amphipods per sq m (15 per sq ft; ±165 per sq m, ±15 per sq ft).

Pecos Amphipod *(Gammarus pecos* Cole and Bousfield 1970)

The Pecos amphipod was first collected in 1964 from Diamond Y Spring and was described by Cole and Bousfield (1970, p. 89). Cole (1985, p. 101) analyzed morphological characteristics of the *Gammarus pecos* species complex and suggested the *Gammarus* amphipod from San Solomon Spring should also be included as Pecos amphipod. However, updated genetic analyses based on allozymes (Gervasio *et al.* 2004, p. 526) and mitochondrial DNA (Seidel *et al.* 2009, p. 2309) have shown that Pecos amphipods are limited in distribution to the Diamond Y Spring system. In addition, Gervasio *et al.* (2004, pp. 523, 526) evaluated amphipods from three different locations within the Diamond Y Spring system and found no significant differences in genetic variation, indicating they all represented a single species. Based on these published studies, we conclude that Pecos amphipod is a listable entity under the Act.

The Pecos amphipod is generally found in all the flowing water habitats associated with the outflows of springs and seeps in the Diamond Y Spring

system (Echelle *et al.* 2001, p. 20; Lang *et al.* 2003, p. 51; Allan 2011, p. 2; Lang 2011, entire). There is no available information to determine if the species' historic distribution was larger than the present distribution. Other area springs, such as Comanche and Leon Springs, may have contained the same or similar species of amphipod, but because these springs have been dry for many decades (Brune 1981, pp. 256–263, 382–386), there is no opportunity to determine the potential historic occurrence of amphipods. Pecos amphipods are often locally abundant, with reported mean densities ranging from 2,208 individuals per sq m (205 per sq ft; ±1,585 per sq m, ±147 per sq ft) to 8,042 individuals per sq m (748 per sq ft; ±7,229 per sq m, ±672 per sq ft) (Lang *et al.* 2003, p. 51).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, the Service determines whether a species is endangered or threatened because of any of the following five factors: (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.

Based on the similarity in geographic ranges and threats to habitats, we have divided this analysis into two sections, one covering the three species from the San Solomon Spring system and then a second analysis covering the three species from the Diamond Y Spring system. After each analysis we provide proposed determinations for each species.

San Solomon Spring Species—Phantom Cave Snail, Phantom Springsnail, and Diminutive Amphipod

The following analysis applies to the three species that occur in the San Solomon Spring system in Reeves and Jeff Davis Counties, Texas: Phantom Cave snail, Phantom Lake springsnail, and diminutive amphipod.

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range (San Solomon Spring Species)

The three species in the San Solomon Spring system are threatened by the past and future destruction of their habitat and reduction in their range. The discussion below evaluates the stressors of: (1) Spring flow declines; (2) water quality changes and contamination; and (3) modification of spring channels.

Spring Flow Declines

The primary threat to the continued existence of the San Solomon Spring species is the degradation and potential future loss of aquatic habitat (flowing water from the spring outlets) due to the decline of groundwater levels in the aquifers that support spring surface flows. Habitat for these species is exclusively aquatic and completely dependent on spring flows emerging to the surface from underground aquifer sources. Spring flows throughout the San Solomon Spring system have and continue to decline in flow rate, and as spring flows decline, available aquatic habitat is reduced and altered. If one spring ceases to flow continually, all habitats for the Phantom Cave snail, Phantom Lake springsnail, and diminutive amphipod are lost, and the populations will be extirpated. If all of the springs lose consistent surface flows, all natural habitats for these aquatic invertebrates will be gone, and the species will become extinct.

The springs do not have to cease flowing completely to have an adverse effect on invertebrate populations. The small size of the spring outflows at Phantom, Giffin, and East Sandia Springs makes them particularly susceptible to changes in water chemistry, increased water temperatures during the summer and freezing in the winter. Because these springs are small, any reductions in the flow rates from the springs can reduce the quantity and quality of available habitat for the species, which decreases the number of individuals available and increases the risk of extinction. Water temperatures and chemical factors in springs, such as dissolved oxygen and pH, do not typically fluctuate to a large degree (Hubbs 2001, p. 324), and invertebrates are narrowly adapted to spring conditions and are sensitive to changes in water quality (Hershler 1998, p. 11; Sada 2008, p. 69). Spring flow declines can lead to the degradation and loss of aquatic invertebrate habitat and present a substantial threat to these species.

The precise reason for the declining spring flows remains uncertain, but it is presumed to be related to a combination of groundwater pumping, mainly for agricultural irrigation, and a lack of natural recharge to the supporting aquifers due to limited rainfall and geologic circumstances that prevent recharge. In addition, future changes in the regional climate are expected to exacerbate declining flows. The San Solomon Spring system historically may have had a combined discharged of about 2.8 cms (100 cfs) or 89 million cubic meters per year (cmy) (72,000 acre-feet per year (afy)) (Beach *et al.* 2004, p. 4–53), while today the total discharge is roughly one-third that amount. Some smaller springs, such as Saragosa, Toyah, and West Sandia Springs have already ceased flowing and likely resulted in the extirpation of local populations of these species (assuming they were present there historically). The most dramatic recent decline in flow rates have been observed at Phantom Lake Spring, which is the highest elevation spring in the system and, not unexpectedly, was the first large spring to cease flowing.

Phantom Lake Spring was a historically large desert ciénega with a pond of water more than several acres in size (Hubbs 2001, p. 307). The spring outflow is at about 1,080 m (3,543 ft) in elevation and previously provided habitat for the endemic native aquatic fauna. The outflow from Phantom Lake Spring was originally isolated from the other surface springs in the system, as the spring discharge quickly recharged back underground (Brune 1981, p. 258). Human modifications to the spring outflow captured and channeled the spring water into a canal system for use by local landowners and irrigation by the local water users (Simonds 1996, p. 3). The outflow canal joins the main San Solomon canal within Balmorhea State Park. Despite the significant habitat alterations, the native aquatic fauna (including these three invertebrates) have persisted, though in much reduced numbers of total individuals, in the small pool of water at the mouth of the spring.

Flows from Phantom Lake Spring have been steadily declining since measurements were first taken in the 1930s (Brune 1981, p. 259). Discharge data have been recorded from the spring at least six to eight times per year since the 1940s by the U.S. Geological Survey, and the record shows a steady decline of base flows from greater than 0.3 cms (10 cfs) in the 1940s to 0 cms (0 cfs) in 1999 (Service 2009b, p. 23). The data also show that the spring can have short-term flow peaks resulting from local rainfall events in the Davis Mountains (Sharp *et al.* 1999, p. 4;

Chowdhury *et al.* 2004, p. 341). These flow peaks are from fast recharge of the local aquifer system and discharge through the springs. The flow peaks do not come from direct surface water runoff because the outflow spring is within an extremely small surface drainage basin that is not connected to surface drainage basins from the Davis Mountains upslope. However, after each flow increase, the base flow has returned to the same declining trend within a few months.

Exploration of Phantom Cave by cave divers has led to additional information about the nature of the spring and its supporting aquifer. Over 2,440 m (8,000 ft) of the underwater cave have been mapped. Beyond the entrance, the cave is a substantial conduit that transports a large volume of water, in the 0.6 to 0.7 cms (20 to 25 cfs) range, generally from the northwest to the southeast (Tucker 2009, p. 8), consistent with regional flow pattern hypothesis (Chowdhury *et al.* 2004, p. 319). The amount of water measured is in the range of the rate of flow at San Solomon Spring and, along with water chemistry data (Chowdhury *et al.* 2004, p. 340), confirms that the groundwater flowing by Phantom Lake Spring likely discharges at San Solomon Spring. Tucker (2009, p. 8) recorded a 1-m (3-ft) decline in the water surface elevation within the cave between 1996 and 2009 indicating a decline in the amount of groundwater flowing through Phantom Cave.

Phantom Lake Spring ceased flowing in about 1999 (Allan 2000, p. 51; Service 2009b, p. 23). All that remained of the spring outflow habitat was a small pool of water with about 37 sq m (400 sq ft) of wetted surface area. Hubbs (2001, pp. 323–324) documented changes in water quality (increased temperature, decreased dissolved oxygen, and decreased coefficient of variation for pH, turbidity, ammonia, and salinity) and fish community structure at Phantom Lake Spring following cessation of natural flows. In May 2001, the U.S. Bureau of Reclamation, in cooperation with the Service, installed an emergency pump system to bring water from within the cave to the springhead in order to prevent complete drying of the pool and loss of the federally listed endangered fishes and candidate invertebrates that occur there. Habitat for the San Solomon Spring system invertebrates continues to be maintained at Phantom Lake Spring, and in 2011 the small pool was enlarged, nearly doubling the amount of aquatic habitat available for the species (Service 2012, entire).

The three San Solomon Spring species have maintained minimal populations at Phantom Lake Spring despite the habitat being drastically modified from its original state and being maintained by a pump system since 2000. However, because the habitat is sustained with a pump system, the risk of extirpation of these populations continues to be extremely high from the potential for a pump failure or some unforeseen event. For example, the pump system failed several times during 2008, resulting in stagnant pools and near drying conditions, placing severe stress on the invertebrate populations (Allan 2008, pp. 1–2). Substantial efforts were implemented in 2011 to improve the reliability of the pump system and the quality of the habitat (Service 2012, pp. 5–9). However, because the habitat is completely maintained by artificial means, the potential loss of the invertebrate population will continue to be an imminent threat of high magnitude to the populations at Phantom Lake Spring.

Although long-term data for San Solomon Spring flows are limited, they appear to have declined somewhat over the history of record, though not as severely as Phantom Lake Spring (Schuster 1997, pp. 86–90; Sharp *et al.* 1999, p. 4). Some recent declines in overall flow have likely occurred due to drought conditions and declining aquifer levels (Sharp *et al.* 2003, p. 7). San Solomon Spring discharges are usually in the 0.6 to 0.8 cms (25 to 30 cfs) range (Ashworth *et al.* 1997, p. 3; Schuster 1997, p. 86) and are consistent with the theory that the water bypassing Phantom Lake Spring discharges at San Solomon Spring.

In Giffin Spring, Brune (1981, pp. 384–385) documented a gradual decline in flow between the 1930s and 1970s, but the discharge has remained relatively constant since that time, with outflow of about 0.08 to 0.1 cms (3 to 4 cfs) (Ashworth *et al.* 1997, p. 3; U.S. Geological Survey 2012, p. 2). Although the flow rates from Giffin Spring appear to be steady in recent years, its small size makes the threat of spring flow loss imminent and of high magnitude because even a small decline in flow rate may have substantial impacts on the habitat provided by the spring flow. Also, it would only take a small decline in spring flow rates to result in desiccation of the spring.

Brune (1981, p. 385) noted that flows from Sandia Springs (combining East and West Sandia Springs) were declining up until 1976. East Sandia may be very susceptible to over pumping of the local aquifer in the nearby area that supports the small spring. Measured discharges in 1995 and 1996 ranged from 0.013 to 0.12 cms (0.45 to 4.07 cfs) (Schuster 1997, p. 94). Like the former springs of West Sandia and Saragosa, which also originated in shallow aquifers and previously ceased flowing (Ashworth *et al.* 1997, p. 3), East Sandia Spring's very small volume of water makes it particularly at risk of failure from any local changes in groundwater conditions.

The exact causes for the decline in flow from the San Solomon Spring system are unknown. Some of the possible reasons, which are likely acting together, include groundwater pumping of the Salt Basin Bolson aquifer areas west of the springs, long-term climatic changes, or changes in the geologic structure that permits regional interbasin flow of groundwater (Sharp *et al.* 1999, p. 4; Sharp *et al.* 2003, p. 7). Studies indicate that the base flows originate from ancient waters to the west (Chadhury *et al.* 2004, p. 340) and that many of the aquifers in west Texas receive little to no recharge from precipitation (Scanlon *et al.* 2001, p. 28) and are influenced by regional groundwater flow patterns (Sharp 2001, p. 41).

Ashworth *et al.* (1997, entire) provided a brief study to examine the cause of declining spring flows in the San Solomon Spring system. They concluded that declines in spring flows in the 1990s were more likely the result of diminished recharge due to the extended dry period rather than from groundwater pumpage (Ashworth *et al.* 1997, p. 5). Although possibly a factor, drought is unlikely the only reason for the declines because the drought of record in the 1950s had no measurable effect on the overall flow trend at Phantom Lake Spring (Allan 2000, p. 51; Sharp 2001, p. 49) and because the contributing aquifer receives virtually no recharge from most precipitation events (Beach *et al.* 2004, pp. 6–9, 8–9). Also, Ashworth *et al.* (1997, entire) did not consider the effects of the regional flow system in relation to the declining spring flows. Further, an assessment of the springs near Balmorhea by Sharp (2001, p. 49) concluded that irrigation pumpage since 1945 has caused many springs in the area to cease flowing, lowering water-table elevations and creating a cone of depression in the area (that is, a lowering of the groundwater elevation around pumping areas).

The Texas Water Development Board (2005, entire) completed a comprehensive study to ascertain the potential causes of spring flow declines in the San Solomon Spring system, including a detailed analysis of historic regional groundwater pumping trends. The study was unable to quantify direct

correlations between changes in groundwater pumping in the surrounding counties and spring flow decline over time at Phantom Lake Spring (Texas Water Development Board 2005, p. 93). However, they suggested that because of the large distance between the source groundwater and the springs and the long travel time for the water to reach the spring outlets, any impacts of pumping are likely to be reflected much later in time (Texas Water Development Board 2005, p. 92). The authors did conclude that groundwater pumping will impact groundwater levels and spring flow rates if it is occurring anywhere along the flow path system (Texas Water Development Board 2005, p. 92).

Groundwater pumping for irrigated agriculture has had a measurable effect on groundwater levels in the areas that likely support the spring flows at the San Solomon Spring system. For example, between the 1950s and 2000 the Salt Basin Bolson aquifer in Lobo Flat fell in surface elevation in the range of 15 to 30 m (50 to near 100 ft), and in Wild Horse Flat from 6 to 30 m (20 to 50 ft) (Angle 2001, p. 248; Beach *et al.* 2004, p. 4–9). Beach *et al.* (2004, p. 4–10) found significant pumping, especially in the Wild Horse Flat area, locally influences flow patterns in the aquifer system. The relationship of regional flow exists because Wild Horse Flat is located in the lowest part of the hydraulically connected Salt Basin Bolson aquifer, and next highest is Lobo, followed by Ryan Flat, which is at the highest elevations (Beach *et al.* 2004, p. 9–32). This means that water withdrawn from any southern part of the basin (Ryan and Lobo Flats) may affect the volume of water discharging out of Wild Horse Flat toward the springs. Because these bolson aquifers have little to no direct recharge from precipitation (Beach *et al.* 2004, pp. 6–9, 8–9), these groundwater declines can be expected to permanently reduce the amount of water available for discharge in the springs in the San Solomon Spring system. This is evidenced by the marked decline of groundwater flow out of the Wild Horse Flat toward the southeast (the direction of the springs) (Beach *et al.* 2004, p. 9–27). Based on this information, it appears reasonable that past and future groundwater withdrawals in the Salt Basin Bolson aquifers are likely one of the causes of decreased spring flows in the San Solomon Spring system.

Groundwater pumping withdrawals in Culberson, Jeff Davis, and Presidio Counties in the Salt Basin Bolson aquifer are expected to continue in the future mainly to support irrigated agriculture (Region F Water Planning Group 2010, pp. 2–16–2–19) and will result in continued lowering of the groundwater levels in the Salt Basin Bolson aquifer. The latest plans from Groundwater Management Area 4 (the planning group covering the relevant portion of the Salt Basin Bolson aquifer) expect over 69 million cubic m (56,000 af) of groundwater pumping per year for the next 50 years, resulting in an average drawdown of 22 to 24 m (72 to 78 feet) in the West Texas Bolsons (Salt Basin) aquifer by 2060 (Adams 2010, p. 2; Oliver 2010, p. 7). There have been no studies evaluating the effects of this level of anticipated drawdown on spring flows. The aquifer in the Wild Horse Flat area (the likely spring source) can range from 60 to 300 m (200 to 1,000 ft) thick. So although it is impossible to determine precisely, we anticipate the planned level of groundwater drawdown will likely result in continued future declines in spring flow rates in the San Solomon Spring system.

Another reason that spring flows may be declining is from an increase in the frequency and duration of local and regional drought associated with climatic changes. The term ''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 2007a, 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 2007a, p. 78).

Although the bulk of spring flows appear to originate from ancient water sources with limited recent recharge, any decreases in regional precipitation patterns due to prolonged drought will further stress groundwater availability and increase the risk of diminishment or drying of the springs. Drought affects both surface and groundwater resources and can lead to diminished water quality (Woodhouse and Overpeck 1998, p. 2693) in addition to reducing groundwater quantities. Lack of rainfall may also indirectly affect aquifer levels by resulting in an increase in groundwater pumping to offset water shortages from low precipitation (Mace and Wade 2008, p. 665).

Recent drought conditions may be indicative of more common future conditions. The current, multiyear drought in the western United States, including the Southwest, is the most severe drought recorded since 1900 (Overpeck and Udall 2010, p. 1642). In 2011, Texas experienced the worst annual drought since recordkeeping began in 1895 (NOAA 2012, p. 4), and only one other year since 1550 (the year 1789) was as dry as 2011 based on tree-ring climate reconstruction (NOAA 2011, pp. 20–22). In addition, numerous climate change models predict an overall decrease in annual precipitation in the southwestern United States and northern Mexico.

Future global climate change may result in increased magnitude of droughts and further contribute to impacts on the aquatic habitat from reduction of spring flows. There is high confidence that many semi-arid areas like the western United States will suffer a decrease in water resources due to ongoing climate change (IPCC 2007b, p. 7; Karl *et al.* 2009, pp. 129–131), as a result of less annual mean precipitation. Milly *et al.* (2005, p. 347) also project a 10 to 30 percent decrease in precipitation in mid-latitude western North America by the year 2050 based on an ensemble of 12 climate models. Even under lower greenhouse gas emission scenarios, recent projections forecast a 10 percent decline in precipitation in western Texas by 2080 to 2099 (Karl *et al.* 2009, pp. 129–130). Assessments of climate change in west Texas suggest that the area is likely to become warmer and at least slightly drier (Texas Water Development Board 2008, pp. 22–25).

The potential effects of future climate change could reduce overall water availability in this region of western Texas and compound the stressors associated with declining flows from the San Solomon Spring system. As a result of the effects of increased drought, spring flows could decline indirectly as a result of increased pumping of groundwater to accommodate human needs for additional water supplies (Mace and Wade 2008, p. 664; Texas Water Development Board 2012c, p. 231).

In conclusion, the Phantom Cave snail, Phantom springsnail, and diminutive amphipod all face significant threats from the current and future loss of habitat associated with declining spring flows. Some springs in the San Solomon Spring system have already gone dry, and aquatic habitat at Phantom Lake Spring has not yet been lost only because of the maintenance of a pumping system. While the sources of the stress of declining spring flows are not known for certain, the best available scientific information indicates that it is the result of a combination of factors including past and current groundwater

pumping, the complex hydrogeologic conditions that produce these springs (ancient waters from a regional flow system), and climatic changes (decreased precipitation and recharge). The threat of habitat loss from declining spring flows affects all four of the remaining populations, as all are at risk of future loss from declining spring flows. All indications are that the source of this threat will persist into the future and will result in continued degradation of the species' habitats, putting the Phantom Cave snail, Phantom springsnail, and diminutive amphipod at a high risk of extinction.

Water Quality Changes and Contamination

Another potential factor that could impact habitat of the San Solomon Spring species is the potential degradation of water quality from point and nonpoint pollutant sources. This can occur either directly into surface water or indirectly through contamination of groundwater that discharges into spring run habitats used by the species. The primary threat for contamination in these springs comes from herbicide and pesticide use in nearby agricultural areas. There are no oil and gas operations in the area around the San Solomon Spring system.

These aquatic invertebrates are sensitive to water contamination. Hydrobiid snails as a group are considered sensitive to water quality changes, and each species is usually found within relatively narrow habitat parameters (Sada 2008, p. 59). Amphipods generally do not tolerate habitat desiccation (drying), standing water, sedimentation, or other adverse environmental conditions; they are considered very sensitive to habitat degradation (Covich and Thorpe 1991, pp. 676–677).

The exposure of the spring habitats to pollutants is limited because most of the nearby agricultural activity mainly occurs in downstream areas where herbicide or pesticide use would not likely come into contact with the species or their habitat in upstream spring outlets. To ensure these pollutants do not affect these spring outflow habitats, their use has been limited in an informal protected area in the outflows of San Solomon and Giffin Springs (Service 2004, pp. 20–21). This area was developed in cooperation with the U.S. Environmental Protection Agency and the Texas Department of Agriculture. While there are more agriculture activities far upstream in the aquifer source area, there is no information indicating concerns about contaminants from those sources.

In addition, Texas Parks and Wildlife Department completed a Habitat Conservation Plan and received an incidental take permit (Service 2009a, entire) in 2009 under section 10(a)(1)(B) (U.S.C. 1539(a)(1)(B)) of the Act for management activities at Balmorhea State Park (Texas Parks and Wildlife Department 1999, entire). The three aquatic invertebrate candidate species from the San Solomon Spring system were all included as covered species in the permit (Service 2009a, pp. 20–22). This permit authorizes ''take'' of the invertebrates (which were candidates at the time of issuance) in the State Park for ongoing management activities while minimizing impacts to the aquatic species. The activities included in the Habitat Conservation Plan are a part of Texas Parks and Wildlife Department's operation and maintenance of the State Park, including the drawdowns associated with cleaning the swimming pool and vegetation management within the refuge canal and ciénega. The Habitat Conservation Plan also calls for restrictions and guidelines for chemical use in and near aquatic habitats to avoid and minimize impacts to the three aquatic invertebrate species (Service 2009a, pp. 9, 29–32).

Because the use of potential pollutants is very limited within the range of the San Solomon Spring species, at this time we do not find that the Phantom Cave snail, Phantom springsnail, and diminutive amphipod are at a heightened risk of extinction from water quality changes or contamination.

Modification of Spring Channels

The natural ciénega habitats of the San Solomon Spring system have been heavily altered over time primarily to accommodate agricultural irrigation. Most significant was the draining of wetland areas and the modification of spring outlets to develop the water resources for human use. San Solomon and Phantom Lake Springs have been altered the most severely through capture and diversion of the spring outlets into concrete irrigation canals. Giffin Spring appears to have been dredged in the past, and the outflow is now immediately captured in high-banked, earthen-lined canals. The outflow of East Sandia Spring does not appear to have been altered in an appreciable way, but it may have been minimally channelized to connect the spring flow to the irrigation canals.

The Reeves County Water Improvement District No. 1 maintains an extensive system of about 100 km (60 mi) of irrigation canals that now provide only minimal aquatic habitat for the invertebrate species near the spring sources. Most of the canals are concrete-lined with high water velocities and little natural substrate available. Many of the canals are also regularly dewatered as part of the normal water management operations. Before the canals were constructed, the suitable habitat areas around the spring openings, particularly at San Solomon Spring, were much larger in size. The conversion of the natural aquatic mosaic of habitats into linear irrigation canals represents a past impact resulting in significant habitat loss and an increase in the overall risk of extinction by lowering the amount of habitat available to the species and, therefore, lowering the overall number of individuals in the populations affected. These reductions in population size result in an increase in the risk of extirpation of local populations and, ultimately, the extinction of the species as a whole. Because the physical conditions of the spring channels have changed dramatically in the past, the species are now at a greater risk of extinction because of the alterations to the ecosystem and the overall lower number of individuals likely making up the populations.

A number of efforts have been undertaken at Balmorhea State Park to conserve and maintain aquatic habitats at some of the spring sites to conserve habitat for the native aquatic species. First, a refuge canal encircling the historic motel was built in 1974 to create habitat for the endangered fishes, Comanche Springs pupfish and Pecos gambusia (Garrett 2003, p. 153). Although the canal was concrete-lined, it had slower moderate water velocities, and natural substrates covered the wide concrete bottom and provided usable habitat for the aquatic invertebrates. Second, the 1-ha (2.5-ac) San Solomon Ciénega was built in 1996 to create an additional flow-through pond of water for habitat of the native aquatic species (Garrett 2003, pp. 153–154). Finally, during 2009 and 2010, a portion of the deteriorating 1974 refuge canal was removed and relocated away from the motel. The wetted area was expanded to create a new, larger ciénega habitat. This was intended to provide additional natural habitat for the federally listed endangered fishes and candidate invertebrates (Service 2009c, p. 3; Lockwood 2010, p. 3). All of these efforts have been generally successful in providing additional habitat areas for the aquatic invertebrates, although neither the snails nor amphipods have been shown to use the newest ciénega pond to date (Allan 2011, p. 3).

At Phantom Lake Spring, a pupfish refuge canal was built in 1993 (Young *et al.* 1993, pp. 1–3) to increase the available aquatic habitat that had been destroyed by the irrigation canal. Winemiller and Anderson (1997, pp. 204–213) showed that the refuge canal was used by endangered fish species when water was available. Stomach analysis of the endangered pupfish from Phantom Lake Spring showed that the Phantom Cave snail and diminutive amphipod were a part of the fish's diet (Winemiller and Anderson 1997, pp. 209–210), indicating that the invertebrates also used the refuge canal. The refuge canal was constructed for a design flow down to about 0.01 cms (0.5 cfs), which at the time of construction was the lowest flow ever recorded out of Phantom Lake Spring. The subsequent loss of spring flow eliminated the usefulness of the refuge canal because the canal went dry beginning in about 2000.

All the water for the remaining spring head pool at Phantom Lake Spring is being provided by a pump system to bring water from about 23 m (75 ft) within the cave out to the surface. The small outflow pool was enlarged in 2011 (U.S. Bureau of Reclamation 2011, p. 1; Service 2012, entire) to encompass about 75 sq m (800 sq ft) of wetted area. In 2011, the pool was relatively stable and all three of the San Solomon Spring invertebrates were present (Allan 2011, p. 3; Service 2012, p. 9).

In summary, the modifications to the natural spring channels at San Solomon, Phantom Lake, and Giffin Springs represent activities that occurred in the past and resulted in a deterioration of the available habitat for the Phantom Cave snail, Phantom springsnail, and diminutive amphipod. Actions by conservation agencies over the past few decades have mitigated the impacts of those actions by restoring some natural functions to the outflow channels. While additional impacts from modifications are not likely to occur in the future because of land ownership by conservation entities at three of the four spring sites, the past modifications have contributed to the endangerment of these species by reducing the overall quantity of available habitat and, therefore, reducing the number of individuals of each species that can inhabit the spring outflows. The lower the overall number of individuals of each species and the lower the amount of available habitat, the greater the risk of extinction. Therefore, the modification of spring channels contributes to increased risk of extinction in the future as a consequence of the negative impacts of the past actions.

Other Conservation Efforts

All four of these springs in the San Solomon Spring system are inhabited by two fishes federally listed as endangered—Comanche Springs pupfish (Service 1981, pp. 1–2) and Pecos gambusia (Service 1983, p. 4). Critical habitat has not been designated for either species. In addition, East Sandia Spring is also inhabited by the federally threatened Pecos sunflower (Service 2005, p. 4) and the federally endangered Pecos assiminea snail (Service 2010, p. 5). Both the Pecos sunflower and the Pecos assiminea snail also have critical habitat designated at East Sandia Spring (73 FR 17762, April 1, 2008; 76 FR 33036, June 7, 2011, respectively).

The Phantom Cave snail, Phantom springsnail, and diminutive amphipod have been afforded some protection indirectly in the past due to the presence of these other listed species in the same locations. Management and protection of the spring habitats by Texas Parks and Wildlife Department at San Solomon Spring, U.S. Bureau of Reclamation at Phantom Lake Spring, and The Nature Conservancy at East Sandia Spring have benefited the aquatic invertebrates. However, the primary threat from the loss of habitat due to declining spring flows related to groundwater changes have not been abated by the Federal listing of the fish or other species. Therefore, the conservation efforts provided by the concomitant occurrence of species already listed under the Act have not prevented the past and ongoing habitat loss, nor is it expected to prevent future habitat loss.

Summary of Factor A

Based on our evaluation of the best available information, we conclude that the present and future destruction and modification of the habitat of the Phantom Cave snail, Phantom springsnail, and diminutive amphipod is a significant threat. Some of these impacts occurred in the past from the loss of natural spring flows at several springs likely within the historic range. The impacts are occurring now and are likely to continue in the future throughout the current range as groundwater levels decline and increase the possibility of the loss of additional springs. As additional springs are lost, the number of populations will decline and further increase the risk of extinction of these species. The sources of this threat are not confirmed but are presumed to include a combination of factors associated with groundwater pumping, hydrogeologic structure of the supporting groundwater, and climatic changes. The risk of extinction is also heightened by the past alteration of spring channels reducing the available habitat and the number of individuals in each population.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes (San Solomon Spring Species)

There are very few people who are interested in or study springsnails and amphipods, and those who do are sensitive to their rarity and endemism. Consequently, collection for scientific or educational purposes is very limited. There are no known commercial or recreational uses of these invertebrates. For these reasons we conclude that overutilization for commercial, recreational, scientific, or educational purposes is currently not a threat to the Phantom Lake snail, Phantom springsnail, and diminutive amphipod, and we have no indication that these factors will affect these species in the future.

C. Disease or Predation (San Solomon Spring Species)

The San Solomon Spring species are not known to be affected by any disease. These invertebrates are likely natural prey species for fishes and crayfishes that occur in their habitats. Native snails and amphipods have been found as small proportions of the diets of native fishes at San Solomon and Phantom Lake Springs (Winemiller and Anderson 1997, p. 201; Hargrave 2010, p. 10), and crayfish are a known predator of snails (Hershler 1998, p. 14). Bradstreet (2011, p. 98) assumed that snails at San Solomon Spring were prey for both fishes and crayfishes and suspected that the native snails may be more susceptible than the nonnative snails because of their small body size and thinner shells. In addition, Ladd and Rogowski (2012, p. 289) suggested that the nonnative red-rim melania *(Melanoides tuberculata)* may prey upon native snail eggs of a different species. However, our knowledge of such predation is very limited, and the extent to which the predation might affect native springsnails is unknown. For more discussion about red-rim melania see ''Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.'' We are not aware of any other information indicating that the San Solomon Spring species are affected by disease or predation factors. For these reasons we conclude that disease or predation are not significant threats to the Phantom Lake snail,

Phantom springsnail, and diminutive amphipod, and we have no indication that these factors will affect these species more severely in the future.

D. The Inadequacy of Existing Regulatory Mechanisms (San Solomon Spring Species)

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under Factors A and E. Section 4(b)(1)(A) of the Endangered Species Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *.'' We interpret this language to require the Service to consider relevant Federal, State, and Tribal laws or regulations that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. An example would be the terms and conditions attached to a grazing permit that describe how a permittee will manage livestock on a BLM allotment. They are nondiscretionary and enforceable, and are considered a regulatory mechanism under this analysis. Other examples include State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to the three San Solomon Spring species.

Texas laws provide no specific protection for these invertebrate species, as they are not listed as threatened or endangered by the Texas Parks and Wildlife Department. However, even if they were listed by the State, those regulations (Title 31 Part 2 of Texas Administrative Code) would only prohibit the taking, possession, transportation, or sale of any animal species without the issuance of a permit. The State makes no provision for the protection of the habitat of listed species, which is the main threat to these aquatic invertebrates.

Some protection for the habitat of this species is provided with the land ownership of the springs by Federal (Phantom Lake Spring owned by the U.S. Bureau of Reclamation) and State (San Solomon Spring owned by Texas Parks and Wildlife Department) agencies, and by The Nature Conservancy (East Sandia Spring). However, this land ownership only protects the spring outflow channels and provides no protection for maintaining groundwater levels to ensure continuous spring flows.

In the following discussion, we evaluate the existing local regulations related to groundwater management within areas that might provide indirect benefits to the species' habitats through management of groundwater levels.

Local Groundwater Regulations

One regulatory mechanism that could provide some protection to the spring flows for these species comes from local groundwater conservation districts. Groundwater in Texas is generally governed by the rule of capture unless there is a groundwater district in place. The rule of capture allows a landowner to produce as much groundwater as he or she chooses, as long as the water is not wasted (Mace 2001, p. 11). However, local groundwater conservation districts have been established throughout much of Texas and are now the preferred method for groundwater management in the State (Texas Water Development Board 2012, pp. 23–258). Groundwater districts ''may regulate the location and production of wells, with certain voluntary and mandatory exemptions'' (Texas Water Development Board 2012, p. 27).

There are currently four local groundwater districts in the area west of the springs (Texas Water Development Board 2011, p. 1) that could possibly manage groundwater to protect spring flows in the San Solomon Spring system. The Culberson County Groundwater Conservation District covers the southwestern portion of Culberson County and was confirmed (established by the Texas legislature and approved by local voters) in 1998. The Jeff Davis County Underground Water Conservation District covers all of Jeff Davis County and was confirmed in 1993. The Presidio County Underground Water Conservation District covers all of Presidio County and was confirmed in 1999. The Hudspeth County Underground Water District No. 1 covers the northwest portion of Hudspeth County and was confirmed in 1957. This area of Hudspeth County manages the Bone Spring-Victoria Peak aquifer (Hudspeth County Underground Water District No. 1 2007, p. 1), which is not known to contribute water to the regional flow that supplies the San Solomon Spring system (Ashworth 2001, pp. 143–144). Therefore, we will not further consider that groundwater district.

In 2010 the Groundwater Management Area 4 established ''desired future conditions'' for the aquifers occurring within the five-county area of west Texas (Adams 2010, entire; Texas Water Development Board 2012a, entire). These projected conditions are important because they guide the plans for water use of groundwater within groundwater conservation districts in order to attain the desired future condition of each aquifer they manage (Texas Water Development Board 2012c, p. 23). In the following discussion we review the plans and desired future conditions for the groundwater conservation districts in Culberson, Jeff Davis, and Presidio Counties relative to the potential regulation of groundwater for maintaining spring flows and abating future declines in the San Solomon Spring system.

The Culberson County Groundwater Conservation District seeks to implement water management strategies to ''prevent the extreme decline of water levels for the benefit of all water right owners, the economy, our citizens, and the environment of the territory inside the district'' (Culberson County Groundwater Conservation District 2007, p. 1). The missions of Jeff Davis County Underground Water District and Presidio County Underground Water Conservation District are to ''strive to develop, promote, and implement water conservation and management strategies to protect water resources for the benefit of the citizens, economy, and environment of the District'' (Jeff Davis County Underground Water Conservation District 2008, p. 1; Presidio County Underground Water Conservation District 2009, p. 1). However, all three management plans specifically exclude addressing natural resources issues as a goal because, ''The District has no documented occurrences of endangered or threatened species dependent upon groundwater resources'' (Culberson County Groundwater Conservation District 2007, p. 10; Jeff Davis County Underground Water Conservation District 2008, p. 19; Presidio County Underground Water Conservation District 2009, p. 14). This lack of acknowledgement of the relationship of the groundwater resources under the Districts' management to the conservation of the spring flow habitat at the San Solomon Spring system prevents any direct benefits of their management plans for the three aquatic invertebrates.

We also considered the desired future condition of the relevant aquifer that supports San Solomon Spring system flows. The Culberson County Groundwater Conservation District manages the groundwater where the bulk of groundwater pumping occurs in the Salt Basin Bolson aquifer (part of the West Texas Bolson, the source of the water for the San Solomon Spring system) (Oliver 2010, p. 7). The desired future condition for aquifers within the Culberson County Groundwater Conservation District area includes a 24-m (78-ft) drawdown for the West Texas Bolsons (Salt Basin Bolson aquifer in Wild Horse Flat) to accommodate an average annual groundwater pumping of 46 million cm (38,000 af) (Adams 2010, p. 2; Oliver 2010, p. 7). The desired future condition for the West Texas Bolsons for Jeff Davis County Underground Water Conservation District includes a 72-ft (22-m) drawdown over the next 50 years to accommodate an average annual groundwater pumping of 10 million cm (8,075 af) (Adams 2010, p. 2; Oliver 2010, p. 7). The desired future condition for the West Texas Bolsons for Presidio County Underground Water District also includes a 72-ft (22-m) drawdown over the next 50 years to accommodate an average annual groundwater pumping of 12 million cm (9,793 af) (Adams 2010, p. 2; Oliver 2010, p. 7). These drawdowns are based on analysis using groundwater availability models developed for the Texas Water Development Board (Beach *et al.* 2004, p. 10–6–10–8; Oliver 2010, entire). We expect that these groundwater districts will use their district rules to regulate water withdrawals in such a way as to implement these desired future conditions.

The Salt Basin Bolson aquifer in the Wild Horse Flat area (the likely spring source) can range from 60 to 300 m (200 to 1,000 ft) thick. So although it is impossible to determine precisely, we anticipate the planned level of groundwater drawdown will likely result in continued future declines in spring flow rates in the San Solomon Spring system. Therefore, we expect that continued drawdown of the aquifers as identified in the desired future conditions will contribute to ongoing and future spring flow declines. Based on these desired future conditions from the groundwater conservation districts, we conclude that the regulatory mechanisms available to the groundwater districts directing future groundwater withdrawal rates from the aquifers that support spring flows in the San Solomon Spring system are inadequate to protect against ongoing and future modification of habitat for the Phantom Cave snail, Phantom springsnail, and diminutive amphipod.

Summary of Factor D

Although there are some regulatory mechanisms in place, such as the existence of groundwater conservation districts, we find that the mechanisms are not serving to alleviate or limit the salient threats to the Phantom Cave snail, Phantom springsnail, or diminutive amphipod. We, therefore, conclude that these existing regulatory mechanisms are inadequate to sufficiently reduce the identified threats to the Phantom Cave snail, Phantom springsnail, and diminutive amphipod now and in the future.

E. Other Natural or Manmade Factors Affecting Their Continued Existence (San Solomon Spring Species)

We considered three other factors that may be affecting the continued existence of the San Solomon Spring species: nonnative snails, other nonnative species, and the small, reduced ranges of the three San Solomon Spring species.

Nonnative Snails

Another factor that may be impacting the San Solomon Spring species is the presence of two nonnative snails that occur in a portion of their range. The red-rim melania and quilted melania both occur at San Solomon Spring, and the red-rim melania also occurs at Phantom Lake and Giffin Springs (Allan 2011, p. 1; Bradstreet 2011, pp. 4–5; Lang 2011, pp. 4–5, 11). Both species are native to Africa and Asia and have been imported into the United States as aquarium species. They are now established in various locations across the southern and western portions of the United States (Bradstreet 2011, pp. 4–5; U.S. Geological Survey 2009, p. 2; Benson 2012, p. 2).

The red-rim melania was first reported from Phantom Lake Spring during the 1990s (Fullington 1993, p. 2; McDermott 2000, pp. 14–15) and was first reported from Giffin Spring in 2001 (Lang 2011, pp. 4–5). The species has been at San Solomon Spring for some time longer (Texas Parks and Wildlife Department 1999, p. 14), but it is not found in East Sandia Spring (Lang 2011, p. 10; Allan 2011, p. 1). Bradstreet reported the red-rim melania in all of the habitats throughout San Solomon Spring at moderate densities compared to other snails, with a total population estimate of about 390,000 snails (± 350,000) (Bradstreet 2011, pp. 45–55). Lang (2011, pp. 4–5) also found moderate densities of red-rim melania at Giffin Spring in both the headspring area and downstream spring run area.

The quilted melania was first reported as being at San Solomon Spring in 1999 (Texas Parks and Wildlife Department 1999, p. 14) from observations in 1995 (Bowles 2012, pers. comm.). It was later collected in 2001 (Lang 2011, p. 4), but not identified until Bradstreet (2011, p. 4) confirmed its presence there. The species is not found in any other springs in the San Solomon Spring system, but occurs in all habitats throughout San Solomon Spring at moderate densities compared to other snails, with a total population estimate of about 840,000 snails (±1,070,000) (Bradstreet 2011, pp. 45–55).

The mechanism and extent of potential effects of the two nonnative snails on the native invertebrates have not been studied directly. However, because both nonnative snails occur in relatively high abundances, it is reasonable to presume that they are likely competing for space and food resources in the limited habitats in which they occur. Rader *et al.* (2003, pp. 651–655) reviewed the biology and possible impacts of red-rim melania and suggested that the species had already displaced some native springsnails in spring systems of the Bonneville Basin of Utah. Appleton *et al.* (2009, entire) reviewed the biology and possible impacts of the quilted melania and found potentially significant impacts likely to occur to the native benthic invertebrate community in aquatic systems in South Africa. Currently, East Sandia Spring has remained free of nonnative snails, but their invasion there is a continuing concern (Bradstreet 2011, p. 95). We conclude that these two snails may be having some negative effects on the Phantom Cave snail, Phantom springsnail, and diminutive amphipod based on a potential for competition for spaces and food resources.

Other Nonnative Species

A potential future threat to these species comes from the possible introduction of additional nonnative species into their habitat. In general, introduced species are a serious threat to native aquatic species (Williams *et al.* 1989, p. 18; Lodge *et al.* 2000, p. 7). The threat is particularly elevated at San Solomon Spring where the public access to the habitat is prolific by the thousands of visitors to the Balmorhea State Park who swim in the spring outflow pool. Unfortunately, people will sometimes release nonnative species into natural waters, intentionally or

unintentionally, without understanding the potential impacts to native species. In spite of regulations that do not permit it, visitors to the Park may release nonnative species into the outflow waters of San Solomon Spring. This is presumably how the two nonnative snails became established there. Nonnative fishes are sometimes seen and removed from the water by Park personnel (Texas Parks and Wildlife Department 1999, pp. 46–47). The Park makes some effort to minimize the risk of nonnative species introductions by prohibiting fishing (so no live bait is released) and by taking measures to educate visitors about the prohibition of releasing species into the water (Texas Parks and Wildlife Department 1999, pp. 48). In spite of these efforts, there is an ongoing risk, which cannot be fully determined, that novel and destructive nonnative species could be introduced in the future. This risk is much lower at the other three springs in the San Solomon Spring system because of the lack of public access to these sites.

We conclude that the future introduction of any nonnative species represents an ongoing concern to the aquatic invertebrates, however, the immediacy of this happening is relatively low because it is only a future possibility. In addition, the severity of the impact is also relatively low because it is most likely to occur only at San Solomon Spring and the actual effects of any nonnative species on the Phantom Cave snail, Phantom springsnail, and diminutive amphipod are unknown at this time.

Small, Reduced Range

One important factor that contributes to the high risk of extinction for these species is their naturally small range that has been reduced from past destruction of their habitat. While the overall extent of geographic range of the species has not changed, the number and distribution of local populations within their range has likely been reduced when other small springs within the San Solomon Spring system (such as Saragosa, Toyah, and West Sandia Springs) ceased to flow (Brune 1981, p. 386; Karges 2003, p. 145). These species are now currently limited to four small spring outflow areas, with the populations at Phantom Lake Spring in imminent threat of loss.

The geographically small range with only four populations of these invertebrate species increases the risk of extinction from any effects associated with other threats or stochastic events. When species are limited to small, isolated habitats, they are more likely to become extinct due to a local event that negatively affects the populations (Shepard 1993, pp. 354–357; McKinney 1997, p. 497; Minckley and Unmack 2000, pp. 52–53). In addition, the species are restricted to aquatic habitats in small spring systems and have minimal mobility and no other habitats available for colonization, so it is unlikely their range will ever expand beyond the current extent. This situation makes the magnitude of impact of any possible threat very high. In other words, the resulting effects of any of the threat factors under consideration here, even if they are relatively small on a temporal or geographic scale, could result in complete extinction of the species. While the small, reduced range does not represent an independent threat to these species, it does substantially increase the risk of extinction from the effects of other threats, including those addressed in this analysis and those that could occur in the future from unknown sources.

Summary of Factor E

The potential impacts of these nonnative snails and any future introductions of other nonnative species on the Phantom Cave snail, Phantom springsnail, and diminutive amphipod are largely unknown with the current available information. But the nonnative snails are presumed to have some negative consequences to the native snails through competition for space and resources. The effects on the diminutive amphipod are even less clear, but competition could still be occurring. These nonnative snails have likely been co-occurring for at least 20 years at three of the four known locations for these species, and there is currently nothing preventing the invasion of the species into East Sandia Spring. Considering the best available information, we conclude that the presence of these two nonnative snails and the potential future introductions of nonnative species currently represent a low-intensity threat to the Phantom Cave snail, Phantom Lake springsnail, and diminutive amphipod. In addition, the small, reduced ranges of these species limit the number of available populations and increase the risk of extinction from other threats. In combination with the past and future threats from habitat modification and loss, these factors contribute to the increased risk of extinction to the three native species.

Proposed Determination—San Solomon Spring Species

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Phantom Cave snail, Phantom springsnail, and diminutive amphipod. We find the species are in danger of extinction due to the current and ongoing modification and destruction of their habitat and range (Factor A) from the ongoing and future decline in spring flows, and historic modification of spring channels. The most significant factor threatening these species is a result of historic and future declines in regional groundwater levels that have caused some springs to cease flowing and threatens the remaining springs with the same fate. We did not find any significant threats to the species under Factors B or C. We found that existing regulatory mechanisms are inadequate to provide protection to the species through groundwater management by groundwater conservation districts (Factor D) from existing and future threats. Finally, two nonnative snails occur in portions of the species' range that could be another factor negatively affecting the species (Factor E). The severity of the impact from these nonnative snails or other future introductions of nonnative species is not known, but such introductions may contribute to the risk of extinction from the threats to habitat through reducing the abundance of the three aquatic invertebrates through competition for space and resources. The small, reduced ranges (Factor E) of these species, when coupled with the presence of additional threats, also put them at a heightened risk of extinction.

The elevated risk of extinction of the Phantom Cave snail, Phantom springsnail, and diminutive amphipod is a result of the cumulative nature of the stressors on the species and their habitats. For example, the past reduction in available habitat through modification of spring channels resulted in a lower number of individuals contributing to the sizes of the populations. In addition, the loss of other small springs that may have been inhabited by the species reduced the number of populations that would contribute to the species' overall viability. In this diminished state, the species are also facing future risks from the impacts of continuing declining spring flows, exacerbated by potential extended future droughts resulting from global climate change, and potential effects from nonnative species. All of these factors contribute together to heighten the risk of extinction and lead to our finding that the Phantom Cave snail, Phantom springsnail, and diminutive amphipod are in danger of

extinction throughout all of their ranges and warrant listing as endangered species.

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 endangered throughout all or a significant portion of its range within the foreseeable future.'' 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 Phantom Cave snail, Phantom springsnail, and diminutive amphipod all meet the definition of endangered species under the Act. Significant threats are occurring now and in the foreseeable future, at a high intensity, and across the species' entire range, placing them on the brink of extinction at the present time. Because the threats are placing the species in danger of extinction now and not only in the foreseeable future, we have determined that they meet the definition of endangered species rather than threatened species. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Phantom Cave snail, Phantom springsnail, and diminutive amphipod as endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. The species proposed for listing in this rule are highly restricted within their range, and the threats occur throughout their range. Therefore, we assessed the status of the species throughout their entire range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the species throughout their entire range.

Diamond Y Spring Species—Diamond Y Spring Snail, Gonzales Springsnail, and Pecos Amphipod

The following five-factor analysis applies to the three species that occur in the Diamond Y Spring system in Pecos County, Texas: Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod.

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range (Diamond Y Spring Species)

Spring Flow Decline

The primary threat to the continued existence of the Diamond Y Spring species is the degradation and potential future loss of aquatic habitat (flowing water from the spring outlets) due to the decline of groundwater levels in the aquifers that support spring surface flows. Habitat for these species is exclusively aquatic and completely dependent upon spring outflows. Spring flows in the Diamond Y Spring system appear to have declined in flow rate over time, and as spring flows decline available aquatic habitat is reduced and altered. When a spring ceases to flow continually, all habitats for these species are lost, and the populations will be extirpated. When all of the springs lose consistent surface flows, all natural habitats for these aquatic invertebrates will be gone, and the species will become extinct. We know springs in this area can fail due to groundwater pumping, because larger nearby springs, such as Comanche and Leon Springs have already ceased flowing and likely resulted in the extirpation of local populations of these species (assuming they were present historically).

The springs do not have to cease flowing completely to have an adverse effect on invertebrate populations. The small size of the spring outflows in the Diamond Y Spring system makes them particularly susceptible to changes in water chemistry, increased water temperatures, and freezing. Because these springs are small, any reductions in the flow rates from the springs can reduce the available habitat for the species, decreasing the number of individuals and increasing the risk of extinction. Water temperatures and chemical factors such as dissolved oxygen in springs do not typically fluctuate (Hubbs 2001, p. 324); invertebrates are narrowly adapted to spring conditions and are sensitive to changes in water quality (Hershler 1998, p. 11). Spring flow declines can lead to the degradation and loss of aquatic invertebrate habitat and present a substantial threat to the species.

There have been no regular recordings of spring flow discharge at Diamond Y Spring to quantify any trends in spring flow. The total flow rates are very low, as Veni (1991, p. 86) estimated total discharge from the upper watercourse at 0.05 to .08 cms (2 to 3 cfs) and from the lower watercourse at 0.04 to 0.05 cms (1 to 2 cfs). The nature of the system with many diffuse and unconfined small springs and seeps makes the estimates of water quantity discharging from the spring system difficult to obtain. However, many authors (Veni 1991, p. 86; Echelle *et al.* 2001, p. 28; Karges 2003, pp. 144–145) have described the reductions in available surface waters observed compared to older descriptions of the area (Kennedy 1977, p. 93; Hubbs *et al.* 1978, p. 489; Taylor 1985, pp. 4, 15, 21). The amount of aquatic habitat may vary to some degree based on annual and seasonal conditions, but the overall trend in the reduction in the amount of surface water over the last several decades is apparent.

A clear example of the loss in aquatic habitat comes from Kennedy's (1977, p. 93) description of one of his study sites in 1974. Station 2 was called a ''very large pool'' near Leon Creek of about 1,500 to 2,500 sq m (16,000 to 27,000 sq ft) with shallow depths of 0.5 to 0.6 m (1.6 to 2.0 ft), with a small 2-m (6.6-ft) deep depression in the center. Today very little open water is found in this area, only marshy soils with occasional trickles of surface flow. This slow loss of aquatic habitat has occurred throughout the system over time and represents a substantial threat to the continued existence of the Diamond Y Spring snail, Gonzales springsnail, and the Pecos amphipod.

The precise reason for the declining spring flows remains uncertain, but it is presumed to be related to a combination of groundwater pumping, mainly for agricultural irrigation, and a lack of natural recharge to the supporting aquifers. In addition, future changes in the regional climate are expected to exacerbate declining flows.

Initial studies of the Diamond Y Spring system suggested that the Edwards-Trinity aquifer was the primary source of flows (Veni 1991, p. 86). However, later studies seem to confirm that the Rustler aquifer is instead more likely the chief source of water (Boghici 1997, p. 107). The Rustler aquifer is one of the less-studied aquifers in Texas and encompasses most of Reeves County and parts of Culberson, Pecos, Loving, and Ward Counties in the Delaware Basin of west Texas (Boghici and Van Broekhoven 2001, pp. 209–210). The Rustler strata are thought to be between 75 to 200 m (250 to 670 ft) thick (Boghici and Van Broekhoven 2001, p. 207). Very little recharge to the aquifer likely comes from precipitation in the Rustler Hills in Culberson County, but most of it may be contributed by cross-formational flows from old water from deeper aquifer formations (Boghici and Van

Broekhoven 2001, pp. 218–219). Groundwater planning for the Rustler aquifer anticipates no annual recharge (Middle Pecos Groundwater Conservation District 2010b, p. 18).

Historic pumping from the Rustler aquifer in Pecos County may have contributed to declining spring flows, as withdrawals of up to 9 million cm (7,500 af) in 1958 were recorded, with estimates from 1970 to 1997 suggesting groundwater use averaged between 430,000 cm (350 af) to 2 million cm (1,550 af) per year (Boghici and Van Broekhoven 2001, p. 218). As a result, declines in water levels in Pecos County wells in the Rustler aquifer from the mid-1960s through the late 1970s of up to 30 m (100 ft) have been recorded (Boghici and Van Broekhoven 2001, p. 213). We assume that groundwater pumping has had some impacts on spring flows of the Diamond Y Spring system in the past; however, they have not yet been substantial enough to cause the main springs to cease flowing.

Future groundwater withdrawals may further impact spring flow rates if they occur in areas of the Rustler Aquifer that affect the spring source areas. Groundwater pumping withdrawals in Pecos County are expected to continue in the future mainly to support irrigated agriculture (Region F Water Planning Group 2011, pp. 2-16–2-19) and will result in continued lowering of the groundwater levels in the Rustler aquifer. The latest plans from Groundwater Management Area 3 (the planning group covering the relevant portion of the Rustler Aquifer) allows for a groundwater withdrawal in the Rustler Aquifer not to exceed 90 m (300 ft) in the year 2060 (Middle Pecos Groundwater Conservation District 2010a, p. 2). This level of drawdown will accommodate 12.9 million cm (10,508 af) of annual withdrawals by pumping (Middle Pecos Groundwater Conservation District 2010b, p. 15). This level of pumping would be 30 times more than the long-term average and could result in an extensive reduction in the available groundwater in the aquifer based on the total thickness of the Rustler strata. Therefore, we anticipate this level of groundwater drawdown may contribute to continued declines in spring flow rates in the Diamond Y Spring system.

Another factor possibly contributing to declining spring flows is climatic changes that may increase the frequency and duration of local and regional drought. The term ''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 2007a, 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 2007a, p. 78).

Although the bulk of spring flows probably originates from water sources with limited recent recharge, any decreases in regional precipitation patterns due to prolonged drought will further stress groundwater availability and increase the risk of diminishment or drying of the springs. Drought affects both surface and groundwater resources and can lead to diminished water quality (Woodhouse and Overpeck 1998, p. 2693; MacRae *et al.* 2001, pp. 4, 10) in addition to reducing groundwater quantities. Lack of rainfall may also indirectly affect aquifer levels by resulting in an increase in groundwater pumping to offset water shortages from low precipitation (Mace and Wade 2008, p. 665).

Recent drought conditions may be indicative of more common future conditions. The current, multiyear drought in the western United States, including the Southwest, is the most severe drought recorded since 1900 (Overpeck and Udall 2010, p. 1642). In 2011, Texas experienced the worst annual drought since recordkeeping began in 1895 (NOAA 2012, p. 4), and only 1 other year since 1550 (the year 1789) was as dry as 2011 based on tree-ring climate reconstruction (NOAA 2011, pp. 20–22). In addition, numerous climate change models predict an overall decrease in annual precipitation in the southwestern United States and northern Mexico.

Future global climate change may result in increased severity of droughts and further contribute to impacts on the aquatic habitat from reduction of spring flows. There is high confidence that many semiarid areas like the western United States will suffer a decrease in water resources due to ongoing climate change (IPCC 2007b, p. 7; Karl *et al.* 2009, pp. 129–131), as a result of less annual mean precipitation. Milly *et al.* (2005, p. 347) also project a 10 to 30 percent decrease in precipitation in mid-latitude western North America by the year 2050 based on an ensemble of 12 climate models. Even under lower greenhouse gas emission scenarios, recent projections forecast a 10 percent decline in precipitation in western Texas by 2080 to 2099 (Karl *et al.* 2009, pp. 129–130). Assessments of climate change in west Texas suggest that the area is likely to become warmer and at least slightly drier (Texas Water Development Board 2008, pp. 22–25).

The potential effects of future climate change could reduce overall water availability in this region of western Texas and compound the stressors associated with declining flows from the Diamond Y Spring system. As a result of the effects of increased drought, spring flows could decline indirectly as a result of increased pumping of groundwater to accommodate human needs for additional water supplies (Mace and Wade 2008, p. 664; Texas Water Development Board 2012c, p. 231).

In conclusion, the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod are in danger of extinction because of the past and expected future loss of habitat associated with declining spring flows. Some nearby springs have already gone dry. While the sources of the stress of declining spring flows are not known for certain, the best available scientific information would indicate that it is the result of a combination of factors including past and current groundwater pumping and climatic changes (decreased precipitation and recharge). The threat of habitat loss from declining spring flows affects all the entire range of all three species, as all are at risk of future loss due to declining spring flows. All indications are that the source of this threat will persist into the future and will result in continued degradation of the species' habitats, placing them at a high risk of extinction.

Water Quality Changes and Contamination

Another potential factor that could impact habitat of the Diamond Y Spring species is the potential degradation of water quality from point pollutant sources. This can occur either directly into surface water or indirectly through contamination of groundwater that discharges into spring run habitats used by the species. The primary threat for contamination in these springs comes from activities related to oil and gas exploration, extraction, transportation, and processing.

Oil and gas activities are a source of significant threat to the Diamond Y Spring species because of the potential groundwater or surface water contamination from pollutants (Veni 1991, p. 83; Fullington 1991, p. 6). The Diamond Y Spring system is within an active oil and gas extraction field that has been operational for many decades. In 1990, there were 45 active and plugged wells within the Diamond Y Preserve and an estimated 800 to 1,000 wells perforated the aquifers within the

springs' drainage basins (Veni 1991, p. 83). At this time there are still many active wells located within about 100 m (about 300 ft) of surface waters. In addition, a natural gas processing plant, known as the Gomez Plant, is located within 0.8 km (0.5 mi) upslope of Diamond Y Spring. Oil and gas pipelines cross the habitat, and many oil extraction wells are located near the occupied habitat. Oil and gas drilling also occurs throughout the area of supporting groundwater providing another potential source of contamination through the groundwater supply. The Gomez Plant, which collects and processes natural gas is located about 350 m (1,100 feet) up gradient from the head pool of Diamond Y Spring (Hoover 2011, p. 1). Taylor (1985, p. 15) suggested that an unidentified groundwater pollutant may have been responsible for reductions in abundance of Diamond Y Spring snail in the headspring and outflow of Diamond Y Spring, although there never were any follow-up studies done to investigate the presumption. The potential for an event catastrophic to the Diamond Y Spring species from a contaminant spill or leak is possible at any time (Veni 1991, p. 83).

As an example of the possibility for spills, in 1992 approximately 10,600 barrels of crude oil were released from a 15-cm (6-in) pipeline that traverses Leon Creek above its confluence with Diamond Y Draw. The oil was from a pipeline, which ruptured at a point several hundred feet away from the Leon Creek channel. The spill site itself is about 1.6 km (1 mi) overland from Diamond Y Spring. The pipeline was operated at the time of the spill by the Texas-New Mexico Pipeline Company, but ownership has since been transferred to several other companies. The Texas Railroad Commission has been responsible for overseeing cleanup of the spill site. Remediation of the site initially involved aboveground land farming of contaminated soil and rock strata to allow microbial degradation. In later years, remediation efforts focused on vacuuming oil residues from the surface of groundwater exposed by trenches dug at the spill site. No impacts on the rare fauna of Diamond Y Springs have been observed, but no specific monitoring of the effects of the spill was undertaken (Industrial Economics, Inc. 2005, p. 4–12).

If a contaminant were to leak into the habitat of the species from any of the various sources, the effects of the contamination could result in death to exposed individuals, reductions in food availability, or other ecological impacts (such as long-term alteration to water or soil chemistry and the microorganisms that serve as the base of food web in the aquatic ecosystem). The effects of a surface spill or leak might be contained to a local area and only affect a portion of the populations; however, an event that contaminated the groundwater could impact both the upper and lower watercourses and eliminate the entire range of all three species. There is currently no regular monitoring of the water quality occurring for these species or their habitats, so it is unlikely that the effects would be detected quickly to allow for a timely response.

These invertebrates are sensitive to water contamination. Hydrobiid snails as a group are considered sensitive to water quality changes, and each species is usually found within relatively narrow habitat parameters (Sada 2008, p. 59). Taylor (1985, p. 15) suggested that an unidentified groundwater pollutant may have been responsible for reductions in abundance of Diamond Y Spring snails in the headspring and outflow of Diamond Y Spring, although no follow-up studies were ever conducted to investigate the presumption. Additionally, amphipods generally do not tolerate habitat desiccation (drying), standing water, sedimentation, or other adverse environmental conditions; they are considered very sensitive to habitat degradation (Covich and Thorpe 1991, pp. 676–677).

Several conservation measures have been implemented in the past to reduce the potential for a contamination event. In the 1970s the U.S. Department of Agriculture, Natural Resources Conservation Service (then the Soil Conservation Service) built a small berm encompassing the south side of Diamond Y Spring to prevent a surface spill from the Gomez Plant from reaching the spring head. After The Nature Conservancy purchased the Diamond Y Springs Preserve in 1990, oil and gas companies undertook a number of conservation measures to minimize the potential for contamination of the aquatic habitats. These measures included decommissioning buried corrodible metal pipelines and replacing them with synthetic surface lines, installing emergency shut-off valves, building berms around oil pad sites, and removing abandoned oil pad sites and their access roads that had been impeding surface water flow (Karges 2003, p. 144).

Presently, there is no evidence of habitat destruction or modification due to groundwater or surface water contamination from leaks or spills, and no major spills affecting the habitat have been reported in the past (Veni 1991, p. 83). However, the potential for future adverse effects from a catastrophic event is an ongoing threat of high severity of potential impact but not immediate.

Modification of Spring Channels

The spring outflow channels in the Diamond Y Spring system have remained mostly intact. The main subtle changes in the past were a result of some cattle grazing before The Nature Conservancy discontinued livestock use in 2000, and roads and well pads that were constructed in the spring outflow areas. Most of these structures were removed by the oil and gas industry following The Nature Conservancy's ownership in 1990. Several caliche (hard calcium carbonate material) roads still cross the spring outflows with small culverts used to pass the restricted flows.

A recent concern has been raised regarding the encroachment of bulrush into the spring channels. Bulrush is an emergent plant that grows in dense stands along the margins of spring channels. (An emergent plant is one rooted in shallow water and having most of its vegetative growth above the water.) When flow levels decline, reducing water depths and velocities, bulrush can become very dense and dominate the wetted channel. In 1998, bulrush made up 39 percent (± 33 percent) of the plant species in the wetted marsh areas of the Diamond Y Draw (Van Auken *et al.* 2007, p. 54). Observations by Itzkowitz (2008, p. 5; 2010, pp. 13–14) found that bulrush were increasing in density at several locations within the upper and lower watercourses in Diamond Y Draw resulting in the loss of open water habitats. Itzkowitz (2010, pp. 13–14) also noted a positive response by bulrush following a controlled fire for grassland management.

In addition to water level declines, the bulrush encroachment may have been aided by a small flume that was installed in 2000 about 100 m (300 ft) downstream of the springhead pool at Diamond Y Spring (Service 1999, p. 2). The purpose of the flume was to facilitate spring flow monitoring, but the instrumentation was not maintained. The flume remains in place and is now being used for flow measurements by the U.S. Geological Survey. The installation of the flume may have slightly impounded the water upstream creating shallow, slow overflow areas along the bank promoting bulrush growth. This potential effect of the action was not foreseen (Service 1999, p. 3). Whether or not the flume was the cause, the area upstream of it is now overgrown with bulrush, and the two

snails have not been found in this section for some time.

There are several ways in which dense bulrush stands may alter habitat for the invertebrates. Bulrush grows to a height of about 0.7 m (2 ft) tall in very dense stands. Dense bulrush thickets will result in increased shading of the water surface, which is likely to reduce the algae and other food sources for the invertebrates. In addition, the stems will slow the water velocity, and the root masses will collect sediments and alter the substrates in the stream. These small changes in habitat conditions may result in proportionally large areas of the spring outflow channels being unsuitable for use by the invertebrates, particularly the springsnails. Supporting this idea is the reported distributions of the snails that found them in highest abundance in areas with more open flowing water not dominated by bulrush (Allan 2011, p. 2). The impacts of dense bulrush stands as a result of declining spring flow rates may be negatively affecting the distribution and abundance of the invertebrates within the Diamond Y Spring system.

Another recent impact to spring channels comes from disturbance by feral hogs *(Sus scrofa).* These species have been released or escaped from domestic livestock and have become free-ranging over time (Mapston 2005, p. 6). They have been in Texas for about 300 years and occur throughout the State. The area around Diamond Y Spring has not previously been reported as within their distribution (Mapston 2005, p. 5), but they have now been confirmed there (Allan 2011, p. 2). The feral hogs prefer wet and marshy areas and damage spring channels by creating wallows, muddy depressions used to keep cool and coat themselves with mud (Mapston 2005, p. 15). In 2011, wallows were observed in spring channels formerly inhabited by the invertebrates in both the upper and lower watercourses at the Diamond Y Preserve (Allan 2011, p. 2). The alterations in the spring channels caused by the wallows make the affected area uninhabitable by the invertebrates. The effects of feral hog wallows are limited to small areas but act as another stressor on the very limited habitat of these three Diamond Y Spring species.

Some protection for the spring channel habitats for the Diamond Y Spring species is provided with the ownership and management of the Diamond Y Spring Preserve by The Nature Conservancy (Karges 2003, pp. 143–144). Their land stewardship efforts ensure that intentional or direct impacts to the spring channel habitats will not occur. However, land ownership by The Nature Conservancy provides limited ability to prevent changes such as increases in bulrush or to control feral hogs. Moreover, the Nature Conservancy can provide little protection from the main threats to this species—the loss of necessary groundwater levels to ensure adequate spring flows or contamination of groundwater from oil and gas activities (Taylor 1985, p. 21; Karges 2003, pp. 144–145).

In summary, the modifications to the natural spring channels at the Diamond Y Spring system represent activities that are occurring now and will likely continue in the future through the continued encroachment of bulrush as spring flows continue to decline and through the effects of feral hog wallows. Conservation actions over the past two decades have removed and minimized some past impacts to spring channels by removing livestock and rehabilitating former oil pads and access roads. While additional direct modifications are not likely to occur in the future because of land ownership by The Nature Conservancy, future modifications from bulrush encroachment and feral hog wallows contribute to the suite of threats to the species' habitat by reducing the overall quantity of available habitat and, therefore, reducing the number of individuals of each species that can inhabit the springs. The lower the overall number of individuals of each species and the less available habitat, the greater the risk of extinction. Therefore, the modification of spring channels contributes to increased risk of extinction in the future as a consequence of ongoing and future impacts.

Other Conservation Efforts

The Diamond Y Spring system is inhabited by two fishes federally listed as endangered—Leon Springs pupfish (Service 1985, pp. 3) and Pecos gambusia (Service 1983, p. 4). In addition, the area is also inhabited by the federally threatened Pecos sunflower (Service 2005, p. 4) and the federally endangered Pecos assiminea snail (Service 2010, p. 5). Critical habitat has not been designated for Pecos gambusia. The Diamond Y Spring has been designated as critical habitat for Leon Springs pupfish, Pecos sunflower, and Pecos assiminea snail (45 FR 54678, August 15, 1980; 73 FR 17762, April 1, 2008; 76 FR 33036, June 7, 2011, respectively).

The three Diamond Y Spring species have been afforded some protection indirectly in the past due to the presence of these other listed species in the same locations. Management and protection of the spring habitats by Texas Parks and Wildlife Department, The Nature Conservancy, and the Service has benefited the aquatic invertebrates (Karges 2007, pp. 19–20). However, the primary threat from the loss of habitat due to declining spring flows related to groundwater changes have not been abated by the Federal listing of the fish or other species. Therefore, the conservation efforts provided by the concomitant occurrence of species already listed under the Act have not prevented past and current habitat loss, nor are they expected to do so in the future.

Summary of Factor A

Based on our evaluation of the best available information, we conclude that the present and future destruction and modification of the habitat of the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod is a significant threat. These impacts in the past have come from the loss of natural spring flows at several springs likely within the historic range, and the future threat of the loss of additional springs as groundwater levels are likely to decline in the future. As springs decline throughout the small range of these species, the number of individuals and populations will decline and continue to increase the risk of extinction of these species. The sources of this threat are not confirmed but are presumed to include a combination of factors associated with groundwater pumping and climatic changes. The potential for a spill of contaminants from oil and gas operations presents a constant future threat to the quality of the aquatic habitat. Finally, the risk of extinction is heightened by the ongoing and future modification of spring channels, which reduces the number of individuals in each population, from the encroachment of bulrush and the presence of feral hogs.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes (Diamond Y Spring Species)

There are very few people who are interested in or study springsnails and amphipods, and those who do are sensitive to their rarity and endemism. Consequently, collection for scientific or educational purposes is very limited. There are no known commercial or recreational uses of these invertebrates. For these reasons we conclude that overutilization for commercial, recreational, scientific, or educational purposes are not a threat to the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod, and

we have no indication that these factors will affect these species in the future.

C. Disease or Predation (Diamond Y Spring Species)

The Diamond Y Spring species are not known to be affected by any disease. These invertebrates are likely natural prey species for fishes that occur in their habitats. There are no known nonnative predatory fishes within their spring habitats, but there are crayfish, which are known to prey on snails (Hershler 1998, p. 14). Ladd and Rogowski (2012, p. 289) suggested that the nonnative red-rim melania may prey upon different species of native snail eggs. However, the evidence of such predation is very limited, and the extent to which the predation might affect native snails is unknown. For more discussion about red-rim melania, see ''Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence (Diamond Y Spring Species).'' We are not aware of any other information indicating that the Diamond Y Spring species are affected by disease or predation. For these reasons we conclude that neither disease nor predation are threats to the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod, and we have no indication that these factors will affect these species in the future.

D. The Inadequacy of Existing Regulatory Mechanisms (Diamond Y Spring Species)

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under the other four factors. Section 4(b)(1)(A) of the Endangered Species Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *.'' We interpret this language to require the Service to consider relevant Federal, State, and Tribal laws and regulations that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. An example would be the terms and conditions attached to a grazing permit that describe how a permittee will manage livestock on a BLM allotment. They are nondiscretionary and enforceable, and are considered a regulatory mechanism under this analysis. Other examples include State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to the three San Solomon Spring species.

Texas laws provide no specific protection for these invertebrate species, as they are not listed as threatened or endangered by the Texas Parks and Wildlife Department. However, even if they were listed by the State, those regulations (Title 31 Part 2 of Texas Administrative Code) would only prohibit the taking, possession, transportation, or sale of any animal species without the issuance of a permit. The State makes no provision for the protection of the habitat of listed species, which is the main threat to these aquatic invertebrates.

Some protection for the habitat of this species is provided with the land ownership of the springs by The Nature Conservancy. However, this land ownership only protects the spring outflow channels and provides no protection for maintaining groundwater levels to ensure continuous spring flows.

In the following discussion we evaluate the local regulations related to groundwater management within areas that might provide indirect benefits to the species' habitats through management of groundwater withdrawals, and Texas regulations for oil and gas activities.

Local Groundwater Regulations

One regulatory mechanism that could provide some protection to the spring flows for these species comes from local groundwater conservation districts. Groundwater in Texas is generally governed by the rule of capture unless there is a groundwater district in place. The rule of capture allows a landowner to produce as much groundwater as he or she chooses, as long as the water is not wasted (Mace 2001, p. 11). However, local groundwater conservation districts have been established throughout much of Texas and are now the preferred method for groundwater management in the State (Texas Water Development Board 2012, pp. 23–258). Groundwater districts ''may regulate the location and production of wells, with certain voluntary and mandatory exemptions'' (Texas Water Development Board 2012, p. 27).

There is currently one local groundwater district in the area (Texas Water Development Board 2011, p. 1) that could possibly manage groundwater to protect spring flows in the Diamond Y Spring system. The Middle Pecos Groundwater Conservation District covers all of Pecos County and was confirmed in 2002. The Middle Pecos County Groundwater Conservation District seeks to implement water management strategies to ''help maintain a sustainable, adequate, reliable, cost effective and high quality source of groundwater to promote the vitality, economy and environment of the District'' (Middle Pecos Groundwater Conservation District 2010b, p. 1). However, the management plan provides no objectives to maintain spring flow at Diamond Y Spring or to otherwise conserve the three aquatic invertebrates. This lack of acknowledgement of the relationship between the groundwater resources under the Districts' management to the conservation of the spring flow habitat at the Diamond Y Spring system limits any direct benefits of the management plan for the three aquatic invertebrates.

In 2010 the Groundwater Management Area 3 established ''desired future conditions'' for the aquifers occurring within a six-county area of west Texas (Texas Water Development Board 2012b, entire). These projected conditions are important because they guide the plans for water use of groundwater within groundwater conservation districts in order to attain the desired future condition of each aquifer they manage (Texas Water Development Board 2012c, p. 23). The latest plans from Groundwater Management Area 3 (the planning group covering the relevant portion of the Rustler aquifer) allows for a groundwater withdrawal in the Rustler aquifer not to exceed a 90 m (300 ft) drawdown in the year 2060 (Middle Pecos Groundwater Conservation District 2010a, p. 2). The Rustler strata are thought to be between only about 75 and 200 m (250 and 670 ft) thick. This level of drawdown will accommodate 12.9 million cm (10,508 af) of annual withdrawals by pumping (Middle Pecos Groundwater Conservation District 2010b, p. 15; Williams 2010, pp. 3–5). We expect that the groundwater district will use their district rules to regulate water withdrawals in such a way as to implement these desired future conditions.

We expect that continued drawdown of the Rustler aquifer as identified in the desired future conditions will

contribute to ongoing and future spring flow declines. Based on these desired future conditions from the groundwater conservation district, we find that the regulatory mechanisms directing future groundwater withdrawal rates from the aquifer that supports spring flows in the Diamond Y Spring system are inadequate to protect against ongoing and future modification of habitat for the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod.

Texas Regulations for Oil and Gas Activities

The Railroad Commission of Texas has regulations that govern many activities by the oil and gas industries to minimize the opportunity for the release of contaminants into the surface water or groundwater in Texas (Texas Administrative Code, Title 16. Economic Regulation, Part 1). While the many regulations in place may be effective at reducing the risk of contaminant releases, they cannot remove the threat of a catastrophic event that could lead to the extinction of the aquatic invertebrates. Therefore, because of the inherent risk associated with oil and gas activities in proximity to the habitats of the three Diamond Y Spring species, and the severe consequences to the species of any contamination, Texas regulations for oil and gas activities cannot remove or alleviate the threats associated with water contamination from an oil or gas spill.

Summary of Factor D

Although there are regulatory mechanisms in place, such as the existence of a local groundwater conservation district and State regulations of oil and gas operations, we find that the mechanisms are not serving to alleviate or limit the threats to the Diamond Y Spring snail, Gonzales springsnail, or Pecos amphipod. We, therefore, conclude that these mechanisms are inadequate to sufficiently reduce the identified threats to these species.

E. Other Natural or Manmade Factors Affecting Their Continued Existence (Diamond Y Spring Species)

We considered four other factors that may be affecting the continued existence of the Diamond Y Spring species: nonnative fish management, nonnative snail, other nonnative species, and the small, reduced ranges of the three Diamond Y Spring species.

Nonnative Fish Management

Another source of potential impacts to these species comes from the indirect effect of management to control nonnative fishes in Diamond Y Spring. One of the major threats to the endangered Leon Springs pupfish, which is also endemic to the Diamond Y Spring system, is hybridization with the introduced, nonnative sheepshead minnow *(Cyprinodon variegatus).* On two separate occasions efforts to eradicate the sheepshead minnow have incorporated the use of fish toxicants in the upper watercourse to kill and remove all the fish and restock with pure Leon Springs pupfish. The first time was in the 1970s when the chemical rotenone was used (Hubbs *et al.* 1978, pp. 489–490) with no documented conservation efforts or monitoring for the invertebrate community.

A second restoration effort was made in 1998 when the fish toxicant Antimycin A was used (Echelle *et al.* 2001, pp. 9–10) in the upper watercourse. In that effort, actions were taken to preserve some invertebrates (holding them in tanks) during the treatment, and an intense monitoring effort was conducted to measure the distribution and abundance of the invertebrates immediately before and for 1 year after the chemical treatment (Echelle *et al.* 2001, p. 14). The results suggested that the Antimycin A had an immediate and dramatic negative effect on Pecos amphipods; however, their abundance returned to pretreatment levels within 7 months (Echelle *et al.* 2001, p. 23). Gonzales springsnail also showed a decline in abundance that persisted during the 1 year of monitoring following the treatment at both treated and untreated sites (Echelle *et al.* 2001, pp. 23, 51).

There is no information available on the impacts of the initial rotenone treatment, but we suspect that, like the later Antimycin A treatment, there were at least short-term effects on the individuals of the Diamond Y Spring species. Both of these chemicals kill fish and other gill-breathing animals (like the three invertebrates) by inhibiting their use of oxygen at the cellular level (U.S. Army Corps of Engineers 2009, p. 2). Both chemicals are active for only a short time, degrade quickly in the environment, and are not toxic beyond the initial application. The long-term effects of these impacts are uncertain, but the available information indicates that the Gonzales springsnail may have responded negatively over at least 1 year. This action was limited to the upper watercourse populations, and the effects were likely short-term in nature.

The use of fish toxicants represents past stressors that are no longer directly affecting the species but may have some lasting consequences to the distribution and abundance of the snails. Currently the Gonzales springsnail occurs in this area of the upper watercourse in a very narrow stretch of the outflow channel from Diamond Y Spring, and the Diamond Y Spring snail may no longer occur in this stretch. Whether or not the application of the fish toxicants influenced these changes in distribution and the current status of the Gonzales springsnail is unknown. However, there is some possibility that these actions could have contributed to the current absence of the Diamond Y Spring snail from this reach and the restricted distribution of the Gonzales springsnail that now occurs in this reach. These actions only occurred in the past, and we do not anticipate them occurring again in the future. If the sheepshead minnow were to invade this habitat again, we do not expect that chemical treatment would be used due to a heightened concern about conservation of the invertebrates. Therefore, we consider this threat relatively insignificant because it was not severe in its impact on the species, and it is not likely to occur again in the future.

Nonnative Snail

Another factor that may be impacting the Diamond Y Spring species is the presence of the nonnative red-rim melania, an invertebrate species native to Africa and Asia that has been imported as an aquarium species and is now established in various locations across the southern and western portions of the United States (Benson 2012, p. 2).

The red-rim melania became established in Diamond Y Spring in the mid 1990s (Echelle *et al.* 2001, p. 15; McDermott 2000, p. 15). The exotic snail is now the most abundant snail in the Diamond Y Spring system (Ladd 2010, p. 18). It only occurs in the first 270 m (890 ft) of the upper watercourse of the Diamond Y Spring system, and it has not been detected in the lower watercourse (Echelle *et al.* 2001, p. 26; Ladd 2010, p. 22).

The mechanism and extent of potential effects of this nonnative snail on the native invertebrates have not been studied directly. However, because the snail occurs in relatively high abundances, it is reasonable to presume that it is likely competing for space and food resources in the limited habitats within which they occur. Rader *et al.* (2003, pp. 651–655) reviewed the biology and possible impacts of red-rim melania and suggested that the species had already displaced some native springsnails in spring systems of the Bonneville Basin of Utah. In the upper

watercourse where the red-rim melania occurs, only the Gonzales springsnail occurs there now in very low abundance in the area of overlap, and the Diamond Y Spring snail does not occur in this reach any longer (Ladd 2010, p. 19).

The potential impacts of the red-rim melania on the three aquatic invertebrate species in the Diamond Y Spring system are largely unknown with the current available information, but the nonnative snail is presumed to have some negative consequences to the native snails through competition for space and resources. The effects on the Pecos amphipod is even less clear, but competition could still be occurring. The red-rim melania has been present in the upper watercourse since the mid 1990s, and there is currently nothing preventing the invasion of the species into Euphrasia Spring in the lower watercourse by an incidental human introduction or downstream transport during a flood. Considering the best available information, we conclude that the presence of this nonnative snail represents a moderate threat to the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod.

Other Nonnative Species

A potential future threat to these species comes from the possible introduction of additional nonnative species into their habitat. In general, introduced species are a serious threat to native aquatic species (Williams *et al.* 1989, p. 18; Lodge *et al.* 2000, p. 7). The threat is moderated by the limited public access to the habitat on The Nature Conservancy's preserve. Unfortunately, the limited access did not prevent the introduction of the nonnative sheepshead minnow on two separate occasions (Echelle *et al.* 2001, p. 4). In addition, invertebrates could be inadvertently moved by biologists conducting studies in multiple spring sites (Echelle *et al.* 2001, p. 26).

While the introduction of any future nonnative species could represent a threat to the aquatic invertebrates, the likelihood of this happening is relatively low because it is only a future possibility. In addition the extent of the impacts of any future nonnative species on the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod are unknown at this time.

Small, Reduced Range

One important factor that contributes to the high risk of extinction for these species is their naturally small range that has likely been reduced from past destruction of their habitat. The overall geographic range of the species may have been reduced from the loss of Comanche Springs (where the snails once occurred and likely the Pecos amphipod did as well) and from Leon Springs (if they historically occurred there). And within the Diamond Y Spring system, their distribution has been reduced as flows from small springs and seeps have declined and reduced the amount of wetted areas in the spring outflow. These species are now currently limited to two small spring outflow areas.

The geographically small range and only two proximate populations of these invertebrate species increases the risk of extinction from any effects associated with other threats or stochastic events. When species are limited to small, isolated habitats, they are more likely to become extinct due to a local event that negatively effects the populations (Shepard 1993, pp. 354–357; McKinney 1997, p. 497; Minckley and Unmack 2000, pp. 52–53). In addition, the species are restricted to aquatic habitats in small spring systems and have minimal mobility and no other habitats available for colonization, so it is unlikely their range will ever expand beyond the current extent. This situation makes the severity of impact of any possible separate threat very high. In other words, the resulting effects of any of the threat factors under consideration here, even if they are relatively small on a temporal or geographic scale, could result in complete extinction of the species. While the small, reduced range does not represent an independent threat to these species, it does substantially increase the risk of extinction from the effects of other threats, including those addressed in this analysis, and those that could occur in the future from unknown sources.

Summary of Factor E

We considered four additional stressors as other natural or manmade factors that may be affecting these species. The effects from management actions to control nonnative fish species are considered low because they occurred in the past, with limited impact, and we do not expect them to occur in the future. The potential impacts of the nonnative snail red-rim melania and any future introductions of other nonnative species on the Phantom Cave snail, Phantom springsnail, and diminutive amphipod are largely unknown with the current available information. But the nonnative snail is presumed to have some negative consequences to the native snails through competition for space and resources. The effects on the Pecos amphipod are even less clear, but competition could still be occurring. These nonnative snails have likely been co-occurring for up to 20 years at one of the two known locations for these species, and there is currently nothing preventing the invasion of the species into Euphrasia Spring by an incidental human introduction or downstream transport during a flood. Considering the best available information, we conclude that the presence of the nonnative snail and the potential future introductions of nonnative species represent a low magnitude threat to the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod. In addition, the effects of the small, reduced ranges of these species limits the number of available populations and increases the risk of extinction from other threats. In combination with the past and future threats from habitat modification and loss, these factors contribute to the increased risk of extinction to the three native species.

Proposed Determination—Diamond Y Spring Species

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod. We find the species are in danger of extinction due to the current and ongoing modification and destruction of their habitat and range (Factor A) from the ongoing and future decline in spring flows, ongoing and future modification of spring channels, and threats of future water contamination from oil and gas activities. The most significant factor threatening these species is a result of historic and future declines in regional groundwater levels that have caused the spring system to have reduced surface aquatic habitat and threaten the remaining habitat with the same fate. We did not find any significant threats to the species under Factors B or C. We found that existing regulatory mechanisms that could provide protection to the species through groundwater management by groundwater conservation districts and Texas regulations of the oil and gas activities (Factor D) are inadequate to protect the species from existing and future threats. Finally, the past management actions for nonnative fishes, the persistence of the nonnative red-rim melania, and the future introductions of other nonnative species are other factors that have or could negatively affect the species (Factor E). The severity of the impact from the red-rim melania is not known, but it and future introductions may contribute to

the risk of extinction from the threats to habitat by reducing the abundance of the three aquatic invertebrates through competition for space and resources. The small, reduced ranges (Factor E) of these species, when coupled with the presence of additional threats, also put them at a heightened risk of extinction.

The elevated risk of extinction of the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod is a result of the cumulative nature of the stressors on the species and their habitats. For example, the past reduction in available habitat from declining surface water in the Diamond Y Spring system results in lower numbers of individuals contributing to the sizes of the populations. In addition, the loss of other spring systems that may have been inhabited by these species reduced the number of populations that would contribute to the species' overall viability. In this diminished state, the species are also facing future risks from the impacts of continuing declining spring flows, exacerbated by potential extended future droughts resulting from global climate change, and potential effects from nonnative species. All of these factors contribute together to heighten the risk of extinction and lead to our finding that the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod are in danger of extinction throughout all of their ranges and warrant listing as endangered species.

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 endangered throughout all or a significant portion of its range within the foreseeable future.'' 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 Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod all meet the definition of endangered under the Act. They do not meet the definition of threatened species, because significant threats are occurring now and in the foreseeable future, at a high magnitude, and across the species' entire range, placing them on the brink of extinction at the present time. Because the threats are placing the species on the brink of extinction now and not only in the foreseeable future, we have determined that they meet the definition of endangered species rather than threatened species. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod as endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. The species proposed for listing in this rule are highly restricted in their range, and the threats occur throughout their ranges. Therefore, we assessed the status of these species throughout their entire ranges. The threats to the survival of these species occur throughout the species' ranges and are not restricted to any particular significant portion of their ranges. Accordingly, our assessments and proposed determinations apply to these species throughout their entire ranges.

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, and 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 required by 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 these 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 on our Web site (*http://www.fws.gov/endangered*), or from our Austin 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, Tribes, 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, State, and Tribal lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection and recovery of these species. Information on our grant programs that are available to aid species recovery can be found at:
http://www.fws.gov/grants.

Although the six aquatic invertebrates are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this 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 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)(4) of the Act 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 listed subsequently, 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 destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape altering activities on Federal lands administered by the U.S. Bureau of Reclamation; issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, 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. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), 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 endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened 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 of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction into the habitat of the six west Texas aquatic invertebrate species of nonnative species that compete with or prey upon any of the six west Texas aquatic invertebrate species;

(3) The unauthorized release of biological control agents that attack any life stage of these species;

(4) Unauthorized modification of the springs or spring outflows inhabited by the six west Texas aquatic invertebrates; and

(5) Unauthorized discharge of chemicals or fill material into any waters in which these species are known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Austin Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Prudency Determination

Section 4 of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) the designation of critical habitat would not be beneficial to the species.

There is no indication that the six species of west Texas invertebrates are threatened by collection and there are no likely increases in the degree of threats to the species if critical habitat were designated. These species are not targets of collection and the areas proposed for designation either have restricted public access or are already readily open to the public (i.e., Balmorhea State Park). None of the threats identified to the species are associated with human access to the sites, with the possible exception of the potential for introducing nonnative species at San Solomon Spring in Balmorhea State Park. This threat, or any other identified threat, is not expected to increase as a result of critical habitat designation because the San Solomon Spring swimming pool is already heavily visited, the Balmorhea State Park take proactive measures to prevent introduction of non-native species, and the designation of critical habitat will not change the situation.

In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits of critical habitat to the six west Texas invertebrates include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur, because, for example, Federal agencies were not aware of the potential impacts of an action on the species; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to any of the six species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Phantom Cave snail, Phantom springsnail, diminutive amphipod, Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod.

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for six aquatic invertebrates in this section of the proposed rules.

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;

(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 that are 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 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 geographic 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 elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, 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 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. 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 geographic 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 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, 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 geographic area occupied by the species at the time of listing to designate as critical habitat, we consider the 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, geographic, and ecological distributions of a species.

We derive the specific physical or biological features required for the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod from studies of the species' habitat, ecology, and life history as described below. We have determined that the following physical or biological features are essential for the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod.

Space for Individual and Population Growth and for Normal Behavior

The aquatic environment associated with spring outflow channels and marshes provide the habitat for Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod growth and normal behavior. The areas must contain permanent flowing water to provide for the biological needs of the species. Each of the species completes all of their life-history functions in the water and cannot exist for any time outside of the aquatic environment.

Several habitat parameters of springs, such as temperature, dissolved carbon dioxide, dissolved oxygen, conductivity, substrate type, and water depth have been shown to influence the distribution and abundance of other related species of springsnails (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). Dissolved salts such as calcium carbonate may also be important factors because they are essential for shell formation for the snails (Pennak 1989, p. 552). Salinity levels are also relevant, particularly at Diamond Y Spring because elevated salinity levels (3 to 6 parts per thousand (Hubbs 2001, p. 314) of dissolved salts) may prevent other more freshwater-adapted species from competing with the native species adapted to higher salinity levels.

The six invertebrates inhabit springs and spring-fed aquatic habitats with low variability in water temperatures. For example, Hubbs (2001, pp. 311–312, 314–315) reported that the spring outflow temperatures had very low variability with average readings of 20 degrees Celsius (°C) (68 degrees Fahrenheit (°F)) at Diamond Y Spring and 19°C (66 °F) at East Sandia Spring with a range between 11 and 25 °C (52 to 77 °F). Spring measurements from 2001 to 2003 at the four springs in the San Solomon Spring complex found water temperatures ranging from 17 to 27 °C (63 to 81 °F) (Texas Water Development Board 2005, p. 38). Proximity to spring vents, where water emerges from the ground, plays a key role in the life history of the six west Texas aquatic invertebrates. For example, many springsnail species exhibit decreased abundance farther away from spring vents, presumably due to their need for stable water chemistry (Hershler 1994, p. 68; Hershler 1998, p. 11; Hershler and Sada 2002, p. 256; Martinez and Thome 2006, p. 14).

The six west Texas aquatic invertebrates are sensitive to water contamination. Hydrobiid snails as a group are considered sensitive to water quality changes, and each species is usually found within relatively narrow habitat parameters (Sada 2008, p. 59). Taylor (1985, p. 15) suggested that an unidentified groundwater pollutant may have been responsible for reductions in abundance of Diamond Y Spring snail in the headspring and outflow of Diamond Y Spring, although no follow-up studies have been conducted to investigate the presumption. Additionally, amphipods generally do not tolerate habitat desiccation (drying), standing water, sedimentation, or other adverse environmental conditions; they are considered very sensitive to habitat degradation (Covich and Thorpe 1991, pp. 676–677).

All six species are most commonly found in flowing water, presumably where dissolved oxygen levels are higher. The species are often found in moderate flowing water along the spring outflow margins rather than in central channels. Water depths where the species occur are generally very shallow, usually less than 1 m (3 ft) deep. An exception to this is the bottom of the San Solomon Spring pool where, because of the construction of the swimming pool, water depths are much greater, exceeding 5 m (15 ft). In San Solomon, Giffin, and Phantom Lake Springs, the habitats for the species are limited to the spring outflow channels because past alteration of the system (building of ditches) has eliminated any small spring openings. However, at Diamond Y Spring (and to a limited extent, East Sandia Spring) the spring outflows have not been severely modified so that small springs, seeps, and marshes still provide diffuse shallow flowing water habitat associated with emergent bulrush and saltgrass (Taylor 1987, p. 38; Echelle *et al.* 2001, p. 5). While these areas are more difficult to map, measure, and survey, these small springs and seeps are important habitat for the three invertebrate species at Diamond Y Spring as long as they provide flowing water.

Therefore, based on the information above, we identify permanent, flowing, unpolluted water (free from contamination) within natural temperature variations, emerging from the ground and flowing on the surface, to be a physical or biological feature necessary for these species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Invertebrates in small spring ecosystems depend on food from two sources: that which grows in or on the substrate (aquatic and attached plants and algae) and that which falls or is blown into the system (primarily leaves). Water is also the medium necessary to provide the algae, detritus (dead or partially decayed plant materials or animals), bacteria, and submergent vegetation on which all six species depend as a food resource. Abundant sunlight is necessary to promote the growth of algae upon which all six west Texas aquatic invertebrates feed.

All four snails are presumably fine-particle feeders on detritus (organic material from decomposing organisms) and periphyton (mixture of algae and other microbes attached to submerged surfaces) associated with the substrates (mud, rocks, and vegetation) (Allan 1995, p. 83; Hershler and Sada 2002, p. 256; Lysne *et al.* 2007, p. 649). Dundee and Dundee (1969, p. 207) found diatoms (a group of single-celled algae)

to be the primary component in the digestive tract of the Phantom Cave snail and Phantom springsnail, indicating diatoms are a primary food source. Spring ecosystems occupied by these snail species must support the periphyton upon which springsnails graze. Additionally, submergent vegetation contributes the necessary nutrients, detritus, and bacteria on which these species forage.

Amphipods are omnivorous, feeding on algae, submergent vegetation, and decaying organic matter (Smith 2001, p. 572). Both species of amphipod are often found in beds of submerged aquatic plants (Cole 1976, p. 80), indicating that they probably feed on a surface film of algae, diatoms, bacteria, and fungi (Smith 2001, p. 572). Young amphipods depend on microbial foods, such as algae and bacteria, associated with aquatic plants (Covich and Thorp 1991, p. 677).

Therefore, based on the information above, we identify the presence of abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage to be a physical or biological feature for these species.

Sites for Cover or Shelter and for Breeding, Reproduction, or Rearing (or Development) of Offspring

The six west Texas aquatic invertebrates occur across a wide range of substrate types. The Phantom Cave snail is most commonly attached to hard surfaces, especially large algae-covered rocks, submerged vegetation, or even concrete walls of the irrigation ditches, and found in areas of higher water velocities (Bradstreet 2011, pp. 73, 91). The other springsnails may also be attached to hard surfaces but will also often be found in the softer substrate at the margins of the stream flows. Suitable substrates for egg laying by the snails are typically firm, characterized by cobble, gravel, sand, woody debris, and aquatic vegetation. These substrates increase productivity by providing suitable egg-laying sites for the snails.

The amphipods, in the absence of predatory fishes, will swim over any open substrate on the channel bottom, but in circumstances where fishes are abundant they may be found in greater abundance underneath large rocks, embedded in gravels, or associated with submerged vegetation. Amphipods do not lay eggs upon a surface; instead, the eggs are held within a marsupium (brood pouch) within the female's exoskeleton.

Therefore, based on the information above, we identify substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, egg laying, maturing, feeding, and escape from predators to be a physical or biological feature for these species.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

The Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod have a very restricted geographic distribution. 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 in which they are currently found and upon which these species depend. Adequate spring sites, free of inappropriate disturbance, must exist to promote population expansion and viability. This means protection from disturbance caused by water depletion, water contamination, springhead alteration, or nonnative species. These species must, at a minimum, sustain their current distributions if ecological representation of these species is to be ensured.

As discussed above (see *Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence*), introduced species are a moderate threat to native aquatic species (Williams *et al.* 1989, p. 18; Lodge *et al.* 2000, p. 7), including the six west Texas aquatic invertebrates. The red-rim melania already competes with all six species where they occur, and the quilted melania has been introduced into habitats occupied by the San Solomon Spring species. Feral hogs cause local spring channel destruction within the Diamond Y Spring system. Because the distribution of the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod is so limited, and their habitat so restricted, introduction of additional nonnative species into their habitat could be devastating.

Therefore, based on the information above, we identify either an absence of nonnative predators and competitors or nonnative predators and competitors at low population levels to be a physical or biological feature necessary for these species.

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 the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

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 primary constituent elements specific to the Phantom Cave snail, Phantom springsnail, diminutive amphipod, Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod are springs and spring-fed aquatic systems that contain:

a. Permanent, flowing, unpolluted water (free from contamination) emerging from the ground and flowing on the surface;

b. Water temperatures that vary between 11 and 27 °C (52 to 81 °F) with natural seasonal and diurnal variations slightly above and below that range;

c. Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, egg laying, maturing, feeding, and escape from predators;

d. Abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage; and

e. Either an absence of nonnative predators and competitors or nonnative predators and competitors at low population levels.

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species. All units and subunits proposed to be designated as critical habitat are currently occupied by the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod and contain the

primary constituent elements in the appropriate quantity and spatial arrangement sufficient to support the life history needs of the species.

Special Management Considerations or Protection

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 protection. The features essential to the conservation of the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod may require special management considerations or protection to reduce threats, such as reducing or eliminating water in suitable or occupied habitat through drought or groundwater pumping; introducing pollutants to levels unsuitable for the species; and introducing nonnative species into the inhabited spring systems such that suitable habitat is reduced or eliminated. Special management considerations or protection are required within critical habitat areas to address these threats (See Summary of Factors Affecting the Species). Management activities that could ameliorate these threats include management of groundwater levels to ensure the springs remain flowing (all spring sites), managing oil and gas activities to eliminate the threat of groundwater or surface water contamination (Diamond Y Spring), maintaining the pump within Phantom Lake Spring to ensure consistent flow, managing existing nonnative species, red-rim melania, quilted melania, and feral hogs (San Solomon, Giffin, Phantom Lake, and Diamond Y Springs), and preventing the introduction of additional nonnative species (all spring sites).

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 requirements 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 geographic area occupied by the species because none of the historically occupied areas (or those that may have been occupied) were found to be essential for the conservation of the species (see discussion below).

We relied on information from knowledgeable biologists and recommendations contained in state wildlife resource reports (Dundee and Dundee 1969, entire; Cole and Bousfield 1970, entire; Cole 1976, entire; Cole 1985, entire; Taylor 1985, entire; Henry 1992, entire; Bowles and Arsuffi 1993, entire; Seidel *et al.* 2009, entire; Hershler *et al.* 2010, entire; Ladd 2010, entire; Allan 2011, entire; Bradstreet 2011, entire; Hershler 2011, p. 1) in making this determination. We also reviewed the available literature pertaining to habitat requirements, historic localities, and current localities for these species. This includes regional geographic information system (GIS) coverages.

Areas Occupied at the Time of Listing

For the purpose of designating critical habitat for the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod, we defined the occupied area based on the most recent surveys available, which includes the Diamond Y and San Solomon Spring systems. We then evaluated whether these areas contain the primary constituent elements for the species and whether they require special management. Next we considered areas historically occupied, but not currently occupied. While the west Texas aquatic invertebrates may have inhabited other springs in the area (such as Saragosa and Toyah Springs, for the San Solomon Spring species, and Leon and Comanche Springs for the Diamond Y Spring species), we only have confirmation that the Diamond Y Spring snail and Gonzales springsnail occurred in Comanche Spring at some point in the past. We evaluated these areas to determine whether they were essential for the conservation of the species.

To determine if currently occupied areas contain the primary constituent elements, we assessed the life-history components of the species as they relate to habitat. All of the west Texas aquatic invertebrate species require unpolluted spring water in the springheads and spring outflows; periphyton and decaying organic material for food; a combination of soft and hard substrates for maturation, feeding, egg laying by snails, and escape from predators; and absence of nonnative predators and competitors (see discussion on *Physical or Biological Features*).

Areas Unoccupied at the Time of Listing

To determine if the sites that may have been historically occupied by the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod are essential for their conservation, we considered: (1) The importance of the site to the overall status of the species to prevent extinction and contribute to future recovery of each species; (2) whether the area could be restored to contain the necessary physical and biological features to support the species; and (3) whether a population of the species could be reestablished at the site.

The Phantom Cave snail, Phantom springsnail, and diminutive amphipod occur in the San Solomon Spring system, which includes San Solomon Spring, Giffin Spring, East Sandia Spring, and Phantom Spring. These species may have occurred in other springs within the system, including Saragosa, Toyah, and West Sandia Springs. These springs now lack water flow and the physical or biological features necessary to support the San Solomon Spring system invertebrates—mainly the lack of flowing water. We do not foresee these features being restorable to the point where populations of the Phantom Cave snail, Phantom springsnail, and diminutive amphipod could be reestablished. These springs are not restorable because we do not foresee an opportunity for groundwater levels to rise sufficiently in the future to restore permanent spring flows because the supporting aquifers are of ancient origin and do not receive substantial modern recharge. Therefore, even if current pumping activities were to be managed for the benefit of spring flows, it is doubtful that aquifer levels would rise sufficiently to provide restoration of permanent aquatic habitat at these sites. For these reasons, we are not proposing Saragosa Spring, Toyah Spring, or West Sandia Spring or any other unoccupied areas as critical habitat for the San Solomon Spring system invertebrates.

The Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod occur in the Diamond Y Spring system. The Diamond Y Spring snail and Gonzales springsnail historically occurred at Comanche Spring, and the Pecos amphipod may have occurred there as well. All three species may have occurred at Leon Spring. Both Comanche Spring and Leon Spring, which have aquifer

sources that may be different or more localized than that of Diamond Y Spring, are dry or nearly so and have been altered to such a degree that they no longer contain the physical or biological features necessary to support the Diamond Y Spring invertebrates—mainly the lack of flowing water. Natural flow conditions from these springs do not appear to be restorable to the point where populations of the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod could be reestablished. For these reasons, we are not proposing Leon Spring or Comanche Spring as critical habitat for the Diamond Y Spring invertebrates.

Mapping

For the areas we are proposing as critical habitat, we plotted the known occurrences of the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod in springheads and spring outflows on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. We drew the boundaries around the water features that make up the critical habitat in each area. Other than at San Solomon Spring, there are no known developed areas such as buildings, paved areas, and other structures that lack the biological features for the springsnail within the proposed critical habitat areas.

When determining proposed critical habitat boundaries, 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 species. 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 within Balmorhea State Park at San Solomon Spring. Any such lands left inside critical habitat boundaries shown on the maps of these proposed rules (such as the asphalt and concrete-paved dry surfaces in Balmorhea State Park) have been excluded by text in these proposed rules 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 would affect the physical or biological features in the adjacent critical habitat.

Summary

We are proposing for designation of critical habitat lands that we have determined are occupied 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 species. Units were proposed for designation based on sufficient elements of physical or biological features being present to support the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod life-history processes. Some units contain all of the identified elements of physical or biological features and supported multiple life-history processes. Some segments contained only some elements of the physical or biological features necessary to support the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod particular use of that habitat.

Proposed Critical Habitat Designation

We are proposing four areas as critical habitat for the Phantom Cave snail, Phantom springsnail, and diminutive amphipod. We are proposing one area as critical habitat for the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the species. The five areas we propose as critical habitat are: (1) San Solomon Spring, (2) Giffin Spring, (3) East Sandia Spring, (4) Phantom Lake Spring, and (5) the Diamond Y Spring System. Phantom Cave snail, Phantom springsnail, and diminutive amphipod all occur in the first 4 units and they are listed in Table 1. Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod occur in the Diamond Y Spring Unit and it is listed in Table 2.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR PHANTOM CAVE SNAIL, PHANTOM SPRINGSNAIL, AND DIMINUTIVE AMPHIPOD

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in hectares (acres)
San Solomon Spring	State—Texas Parks and Wildlife Department	1.8 (4.4)
Giffin Spring	Private	0.7 (1.7)
East Sandia Spring	Private—The Nature Conservancy	1.2 (3.0)
Phantom Lake Spring	Federal—Bureau of Reclamation	0.02 (0.05)
Total		3.7 (9.2)

Note: Area sizes may not sum due to rounding.

TABLE 2—PROPOSED CRITICAL HABITAT UNIT FOR DIAMOND Y SPRING SNAIL, GONZALES SPRINGSNAIL, AND PECOS AMPHIPOD

[Area estimate reflects all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in hectares (acres)
Diamond Y Spring System	Private—The Nature Conservancy	178.6 (441.4)
Total		178.6 (441.4)

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat below.

San Solomon Spring Unit

The San Solomon Spring Unit consists of 1.8 ha (4.4 ac) that is currently occupied by the Phantom Cave snail, Phantom springsnail, and diminutive amphipod and contains all of the features essential to the conservation of these species. It is located in Reeves County, near Balmorhea, Texas. San Solomon Spring provides the water for the large swimming pool at Balmorhea State Park, which is owned and managed by Texas Parks and Wildlife Department. The proposed designation includes all springs, seeps, and outflows of San Solomon Spring, including the part of the concrete-lined pool that has a natural substrate bottom and irrigation ditch, and two constructed ciénegas. While the ditches do not provide all of the physical or biological features (such as submerged vegetation), there are sufficient features (including natural substrates on the ditch bottoms) to provide for the life-history processes of the species. Habitat in this unit is threatened by future declining spring flows due to drought or groundwater withdrawals, the presence of nonnative snails, and the introduction of other nonnative species. Therefore, the primary constituent elements in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

Giffin Spring Unit

Giffin Spring Unit consists of 0.7 ha (1.7 ac) that is currently occupied by the Phantom Cave snail, Phantom springsnail, and diminutive amphipod and contains all of the features essential to the conservation of these species. It is located on private property in Reeves County, near Balmorhea, Texas, and its waters are captured in irrigation earthen channels for agricultural use. The proposed designation includes all springs, seeps, sinkholes, and outflows of Giffin Spring. The unit contains most all of the identified physical and biological features. Habitat in this unit is threatened by declining spring flows due to drought or groundwater withdrawals, the presence of nonnative snails, the introduction of other nonnative species, and further modification of spring outflow channels. Therefore, the primary constituent elements in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

East Sandia Spring Unit

East Sandia Spring consists of 1.2 ha (3.0 ac) that is currently occupied by the Phantom Cave snail, Phantom springsnail, and diminutive amphipod and contains all of the features essential to the conservation of these species. This unit is included within a preserve owned and managed by The Nature Conservancy (Karges 2003, p. 145) in Reeves County just east of Balmorhea, Texas. The proposed designation includes the springhead itself and surrounding seeps and outflows. The unit contains all of the identified physical and biological features. Habitat in this unit is threatened by declining spring flows due to drought or groundwater withdrawals, the introduction of nonnative species, and modification of spring outflow channels. Therefore, the primary constituent elements in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

Phantom Lake Spring Unit

Phantom Lake Spring consists of a small pool about 0.02 ha (0.05 ac) in size that is currently occupied by the Phantom Cave snail, Phantom springsnail, and diminutive amphipod and contains the features essential to the conservation of these species. Phantom Lake Spring is owned by the U.S. Bureau of Reclamation about 6 km (4 mi) west of Balmorhea State Park in Jeff Davis County, Texas. The proposed designation includes only the springhead pool. The physical or biological features of the habitat at Phantom Lake Spring have been maintained since 2000 by a pumping system and subsequent reconstruction of the spring pool. Although artificially maintained, the site continues to provide sufficient physical or biological features to provide for all the life-history processes of the three invertebrate species. Habitat in this unit is threatened by future declining spring flows due to drought or groundwater withdrawals, the presence of nonnative snails, and the introduction of other nonnative species. Therefore, the primary constituent elements in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

Diamond Y Spring Unit

Diamond Y Spring Unit consists of 178.6 ha (441.4 ac) that is currently occupied by the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod and contains all of the features essential to the conservation of these species. Diamond Y Spring and surrounding lands are owned and managed by The Nature Conservancy. The proposed designation includes the Diamond Y Spring and approximately 6.8 km (4.2 mi) of its outflow, including both upper and lower watercourses, ending at approximately 0.8 km (0.5 mi) downstream of the State Highway 18 bridge crossing. Also included in this proposed unit is approximately 0.8 km (0.5 mi) of Leon Creek upstream of the confluence with Diamond Y Draw. The boundaries of this unit extend out laterally beyond the mapped spring outflow channels to incorporate any and all small springs and seeps that may not be mapped or surveyed but are expected to contain the species and the necessary physical or biological features. The unit contains all of the identified physical and biological features. Habitat in this unit is threatened by declining spring flows due to drought or groundwater withdrawals, subsurface drilling and other oil and gas activities that could contaminate surface drainage or aquifer water, the presence of nonnative snails and feral hogs, the introduction of other nonnative species, and modification of spring outflow channels. Therefore, the primary constituent elements in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

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 that 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, 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 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 the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod. 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 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 the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod. These activities include, but are not limited to:

(1) Actions that would reduce the quantity of water flow within the spring systems proposed as critical habitat.

(2) Actions that would contaminate or cause significant degradation of water quality within the spring systems proposed as critical habitat, including surface drainage water or aquifer water quality.

(3) Actions that would modify the springheads or outflow channels within the spring systems proposed as critical habitat.

(4) Actions that would reduce or alter the availability of aquatic substrates within the spring systems that are proposed as critical habitat.

(5) Actions that would reduce the occurrence of native aquatic periphyton within the spring systems proposed as critical habitat.

(6) Actions that would introduce, promote, or maintain nonnative predators and competitors within the spring systems proposed as critical habitat.

Exemptions

Application of Section 4(a)(3) of the Act

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 on some Department of Defense lands. There are no Department of Defense lands within or near the proposed critical habitat designation, so section 4(a)(3)(B)(i) of the Act does not apply.

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.

Under section 4(b)(2) of the Act, we 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 are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. Potential land use sectors that may be affected by critical habitat designation include oil and gas development near the Diamond Y Spring system and agriculture (irrigated lands using groundwater withdrawals) at both spring systems. We also consider any social impacts that might occur because of the designation.

We will announce the availability of the draft economic analysis 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 Austin Ecological Services Field 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 designation of critical habitat for the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exert 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 habitat conservation plans 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 are not proposing any exclusions at this time from the proposed critical habitat designation under section 4(b)(2) of the Act based on partnerships, management, or protection afforded by cooperative management efforts. However, we are considering excluding the San Solomon Spring Unit that is currently covered under a habitat conservation plan with Texas Parks and Wildlife Department for the Phantom Cave snail, Phantom springsnail, and diminutive amphipod for management activities at Balmorhea State Park. This permit authorizes ''take'' of the invertebrates (which were candidates at the time of issuance) in the State Park for ongoing management activities while minimizing impacts to the aquatic species. The activities included in the habitat conservation plan are a part of Texas Parks and Wildlife Department's operation and maintenance of the State Park, including the drawdowns associated with cleaning the swimming pool and vegetation management within the refuge canal and ciénega. The habitat conservation plan also calls for restrictions and guidelines for chemical use in and near aquatic habitats to avoid and minimize impacts to the three aquatic invertebrate species (Service 2009a, pp. 9, 29–32). The habitat conservation plan, however, provides no protection from the main threat to this critical habitat unit—future declining spring flows due to drought or groundwater withdrawals. In these proposed rules, we are seeking input from the public as to whether or not the Secretary should exclude the area within this habitat conservation plan or other such areas under management that benefit the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod from the final critical habitat designation. (Please see the Public Comments section of this document for instructions on how to submit comments).

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 these proposed rules. 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 these proposed designations of critical habitat.

We will consider all comments and information received during this comment period on these proposed rules 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 these proposed rules in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. 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 Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty,

and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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 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 (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 draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the 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 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. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use due to the small amount of habitat we are proposing for designation and the lack of Federal activities that would be affected by the designation. 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 necessary.

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 because the land proposed for designation is either privately owned or owned by U.S. Bureau of Reclamation or the State of Texas. None of these government entities fit the definition of ''small governmental jurisdiction.'' 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), we will analyze the potential takings implications of designating critical habitat for the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod 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 will analyze whether this proposed designation of critical habitat for the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod poses significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), these proposed rules do not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, these proposed critical habitat designations with appropriate State resource agencies in Texas. The designation of critical habitat in areas currently occupied by the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod 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 physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the 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 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. These proposed rules use standard mapping technology and identify the elements of physical or biological features essential to the conservation of the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod within the designated areas to assist the public in understanding the habitat needs of the species.

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.)

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 Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). The range of the Phantom Cave snail, Phantom springsnail, Diamond Y Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod does not occur in the Tenth Circuit, so a NEPA analysis will not be conducted.

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 or near the current or historic ranges of the Phantom Cave snail, Phantom springsnail, Diamond Y

Spring snail, Gonzales springsnail, diminutive amphipod, and Pecos amphipod that contain the features essential for conservation of the species. Therefore, we are not proposing to designate critical habitat on tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0029 and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Southwest Region of the Service.

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—[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 ''Snail, Diamond Y Spring'', ''Snail, Phantom Cave'', ''Springsnail, Gonzales'', and ''Springsnail, Phantom'' under ''SNAILS'' and ''Amphipod, diminutive'' and ''Amphipod, Pecos'' under ''CRUSTACEANS'' to the List of Endangered and Threatened Wildlife in alphabetical order 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:							
*	*	*	*	*	*	*	
Snail, Diamond Y Spring	*Pseudotryonia adamantina*	U.S.A. (TX)	NA	E		17.95(f)	NA
*	*	*	*	*	*	*	
Snail, Phantom Cave	*Pyrgulopsis texana*	U.S.A. (TX)	NA	E		17.95(f)	NA
*	*	*	*	*	*	*	
Springsnail, Gonzales	*Tryonia circumstriata*	U.S.A. (TX)	NA	E		17.95(f)	NA
*	*	*	*	*	*		
Springsnail, Phantom	*Tryonia cheatumi*	U.S.A. (TX)	NA	E		17.95(f)	NA
*	*	*	*	*	*	*	
CRUSTACEANS:							
Amphipod, diminutive	*Gammarus hyalleloides*	U.S.A. (TX)	NA	E		17.95(h)	NA
*	*	*	*	*	*	*	
Amphipod, Pecos	*Gammarus pecos*	U.S.A. (TX)	NA	E		17.95(h)	NA
*	*	*	*	*	*	*	

3. Amend § 17.95 by:

a. In paragraph (f), adding an entry for ''Diamond Y Spring snail *(Pseudotryonia adamantina)* and Gonzales springsnail *(Tryonia circumstriata)''* followed by an entry for ''Phantom Cave snail *(Pyrgulopsis texana)* and Phantom springsnail *(Tryonia cheatumi)''* after the entry for ''Interrupted Rocksnail *(Leptoxis foremani)'',* to read as follows:

b. In paragraph (h), adding an entry for ''Diminutive amphipod *(Gammarus hyalleloides)''* and an entry for ''Pecos amphipod *(Gammarus pecos)''* in the same alphabetical order that these species appear in the table at § 17.11(h), to read as follows.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Diamond Y Spring snail *(Pseudotryonia adamantina)* and Gonzales springsnail *(Tryonia circumstriata)*

(1) A critical habitat unit is depicted for Pecos County, Texas, on the map below.

(2) Within this area, the primary constituent elements of the physical or biological features essential to the conservation of Diamond Y Spring snail and Gonzales springsnail are springs and spring-fed aquatic systems that contain:

(i) Permanent, flowing, unpolluted water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Water temperatures that vary between 11 and 27 °C (52 to 81 °F) with natural seasonal and diurnal variations slightly above and below that range;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, egg laying, maturing, feeding, and escape from predators;

(iv) Abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage; and

(v) Either an absence of nonnative predators and competitors or nonnative

predators and competitors at low population levels.

(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) *Critical habitat map unit.* Data layers defining the map unit were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, (*http://www.fws.gov/southwest/es/AustinTexas/*), Regulations.gov (*http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0029) and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Diamond Y Spring Unit, Pecos County, Texas. Map of Diamond Y Spring Unit follows:

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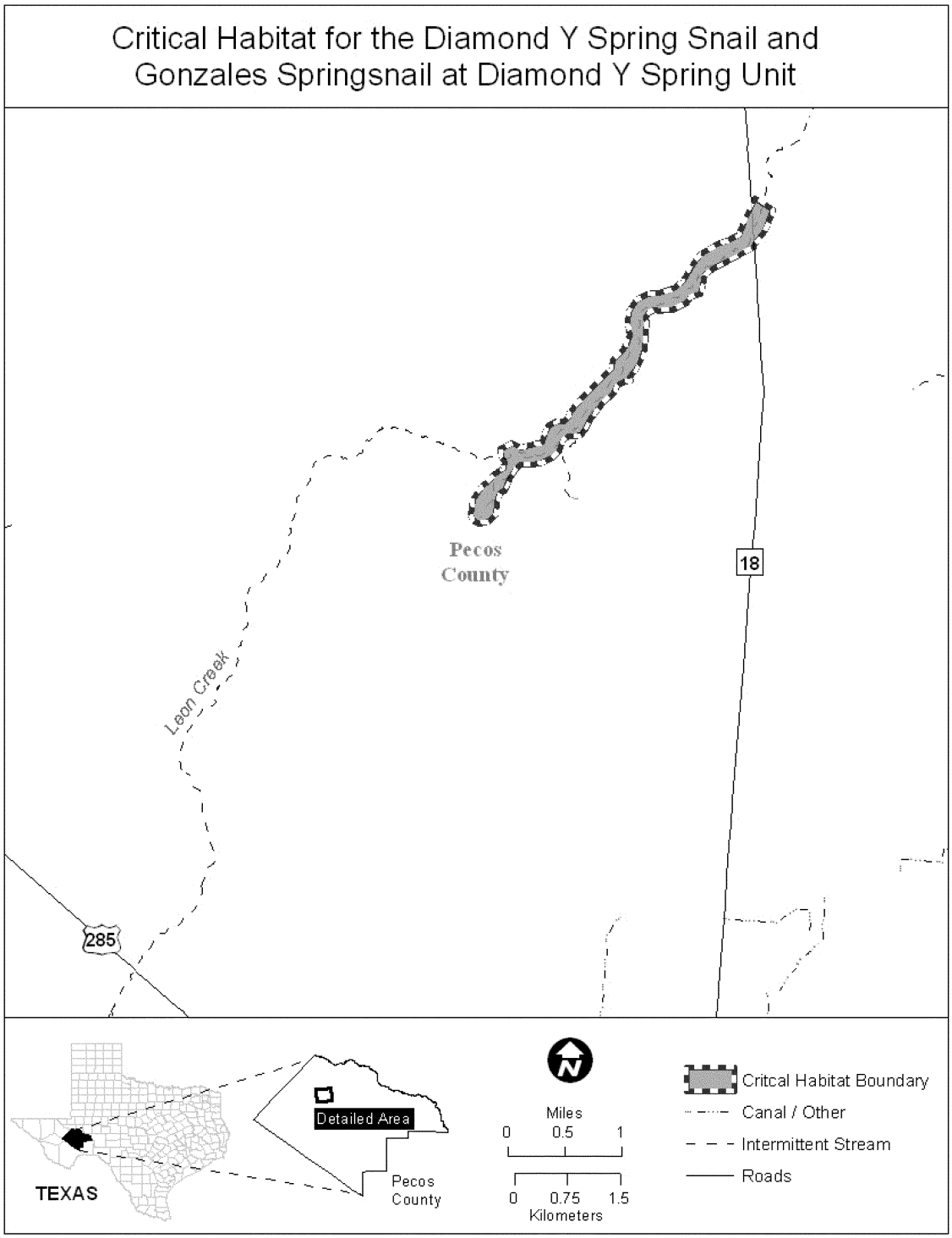


Phantom Cave snail *(Pyrgulopsis texana)* and Phantom springsnail *(Tryonia cheatumi)*

(1) Critical habitat units are depicted for Jeff Davis County and Reeves County, Texas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of Phantom Cave snail and Phantom springsnail are springs and spring-fed aquatic systems that contain:

(i) Permanent, flowing, unpolluted water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Water temperatures that vary between 11 and 27 °C (52 to 81 °F) with natural seasonal and diurnal variations slightly above and below that range;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, egg laying, maturing, feeding, and escape from predators;

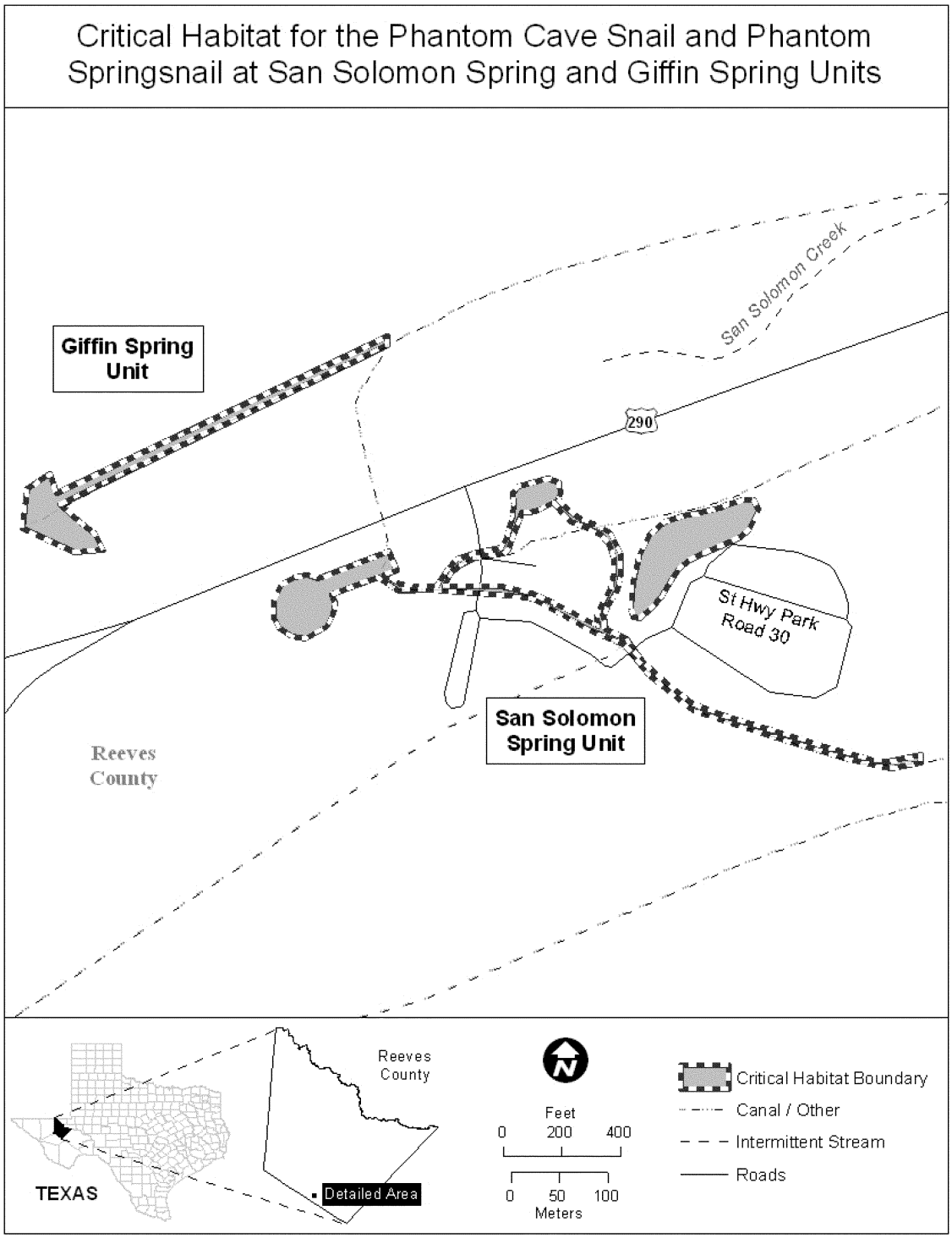
(iv) Abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage; and

(v) Either an absence of nonnative predators and competitors or nonnative predators and competitors at low population levels.

(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.

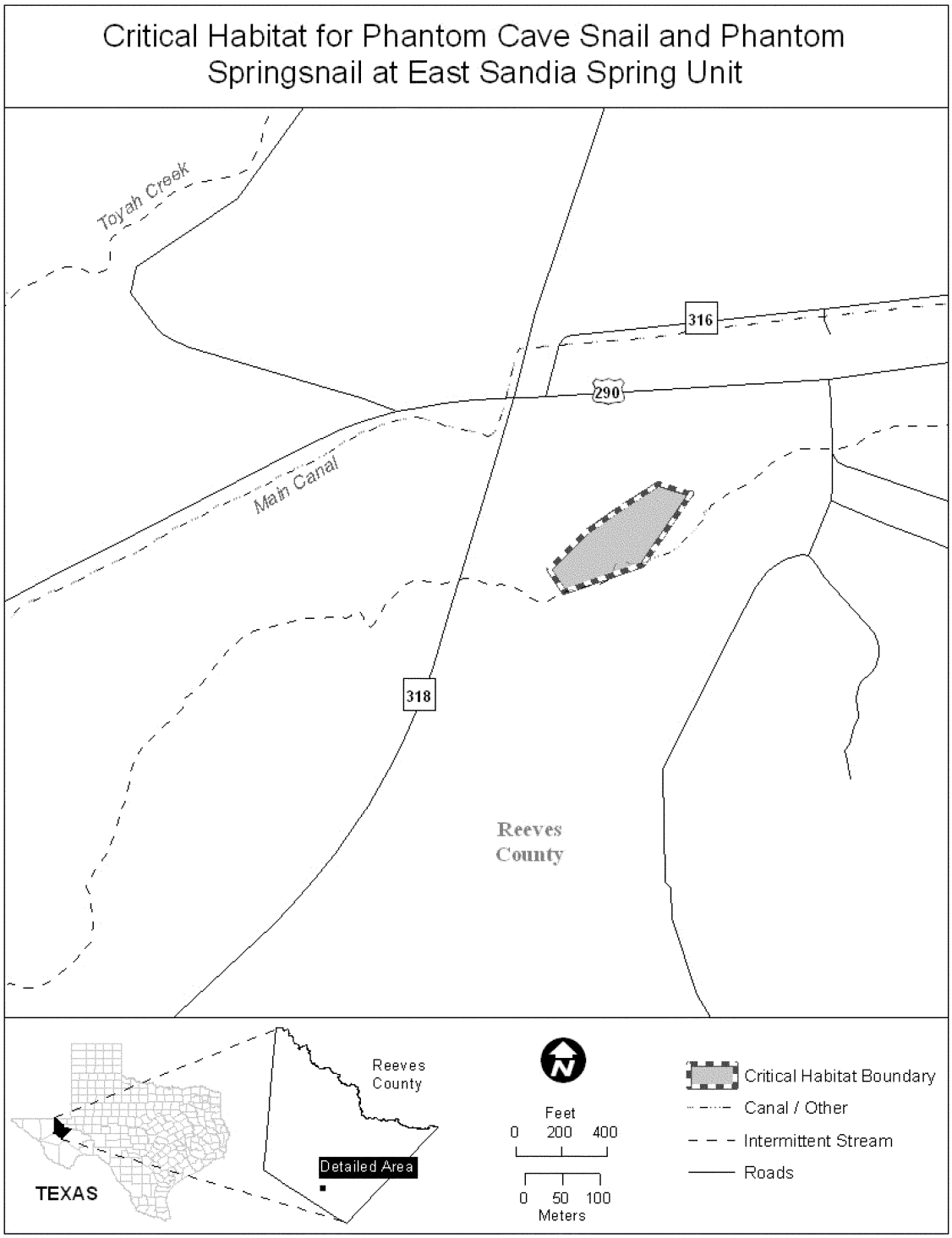
(4) *Critical habitat map units.* Data layers defining map units were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site (*http://www.fws.gov/southwest/es/AustinTexas/*), Regulations.gov (*http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0029) and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) San Solomon Spring Unit, Reeves County, Texas. Map of San Solomon Spring Unit follows:

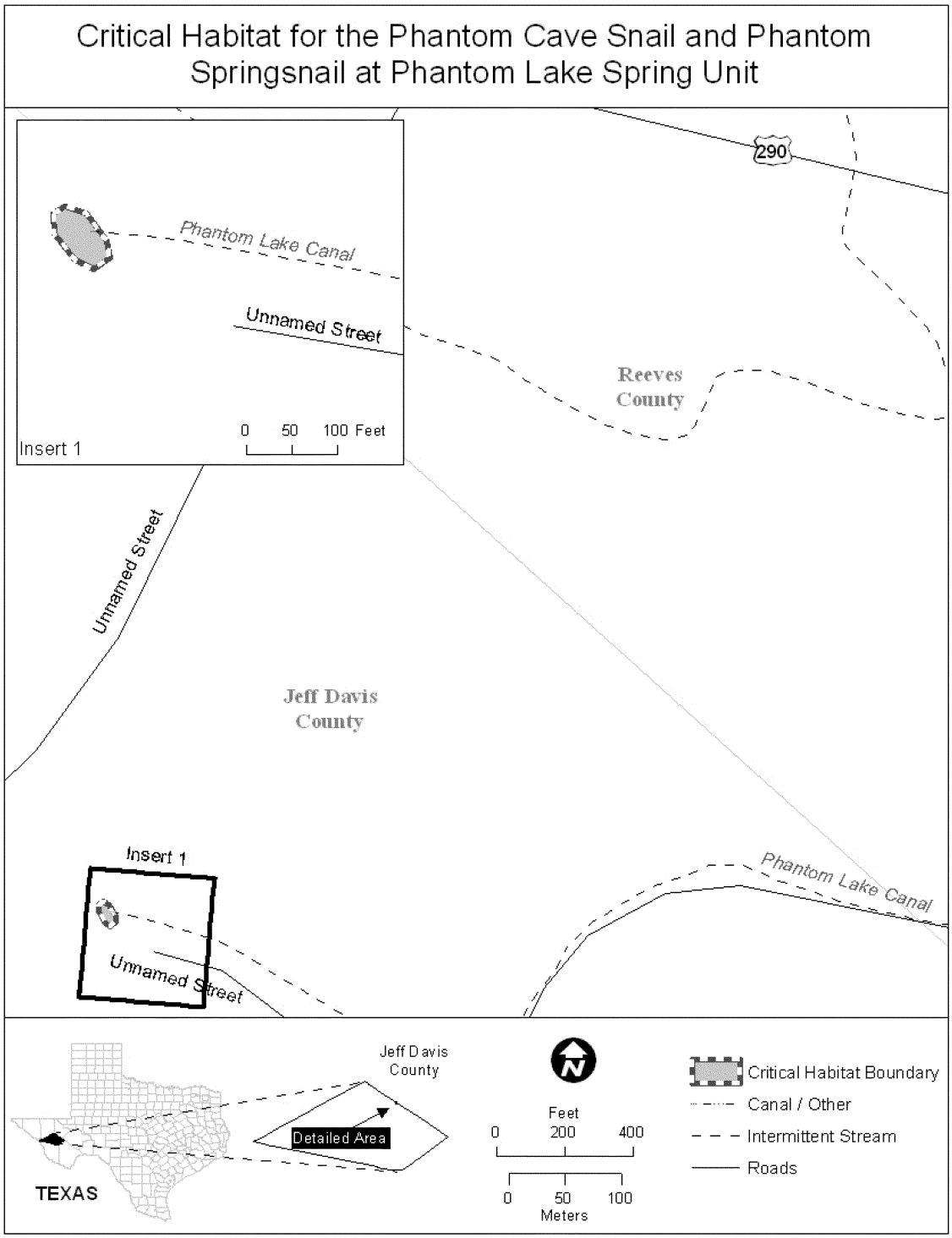


(6) Giffin Spring Unit, Reeves County, Texas. Map of Giffin Spring Unit is provided at subparagraph (5) of this entry.

(7) East Sandia Spring Unit, Jeff Davis County, Texas. Map of East Sandia Spring Unit follows:



(8) Phantom Lake Spring Unit, Jeff Davis County, Texas. Map of Phantom Lake Spring Unit follows:



* * * * *

(h) *Crustaceans.*

Diminutive amphipod *(Gammarus hyalleloides)*

(1) Critical habitat units are depicted for Jeff Davis County and Reeves County, Texas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of diminutive amphipod are springs and spring-fed aquatic systems that contain:

(i) Permanent, flowing, unpolluted water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Water temperatures that vary between 11 and 27 °C (52 to 81 °F) with natural seasonal and diurnal variations slightly above and below that range;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, maturing, feeding, and escape from predators;

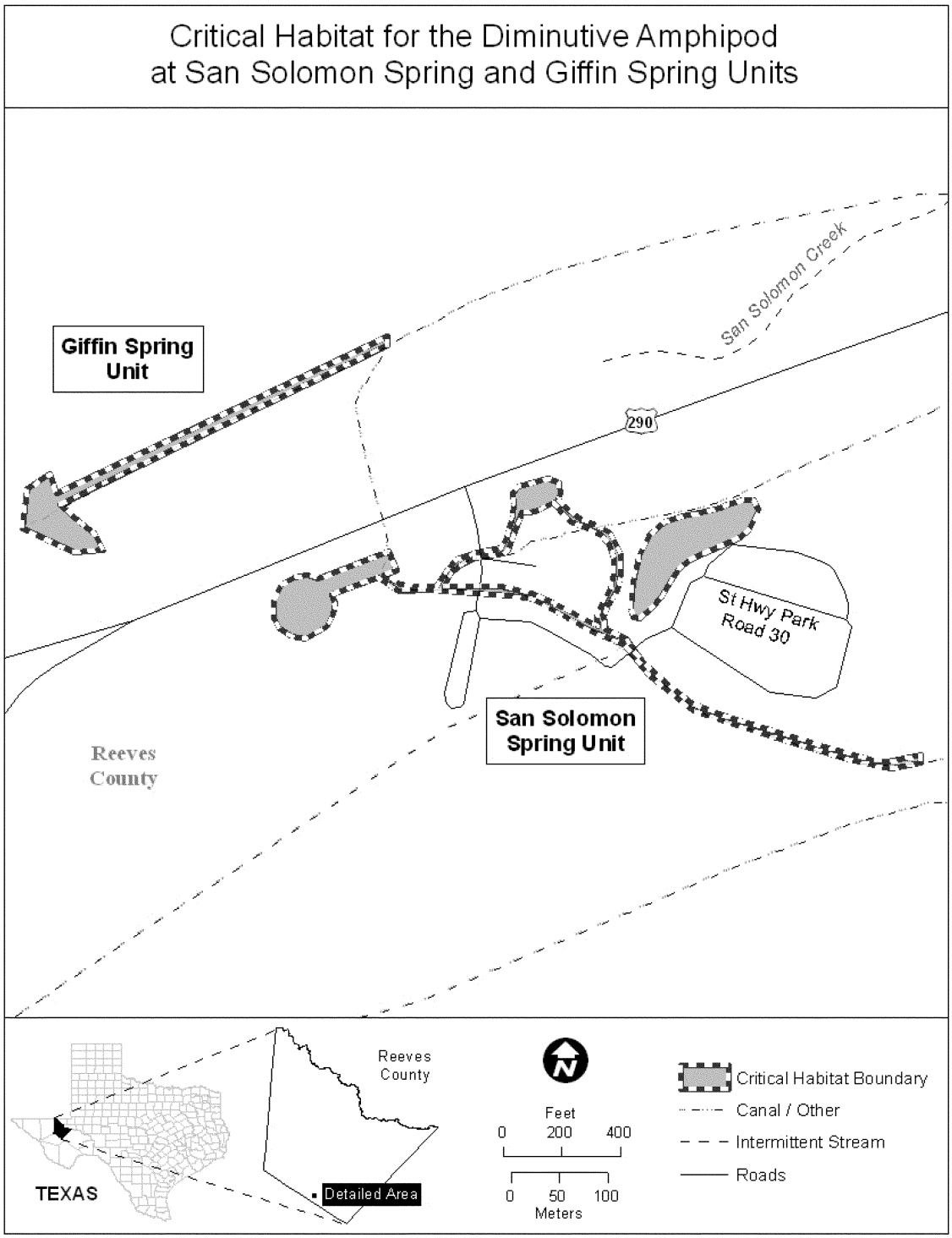
(iv) Abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage; and

(v) Either an absence of nonnative predators and competitors or nonnative predators and competitors at low population levels.

(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.

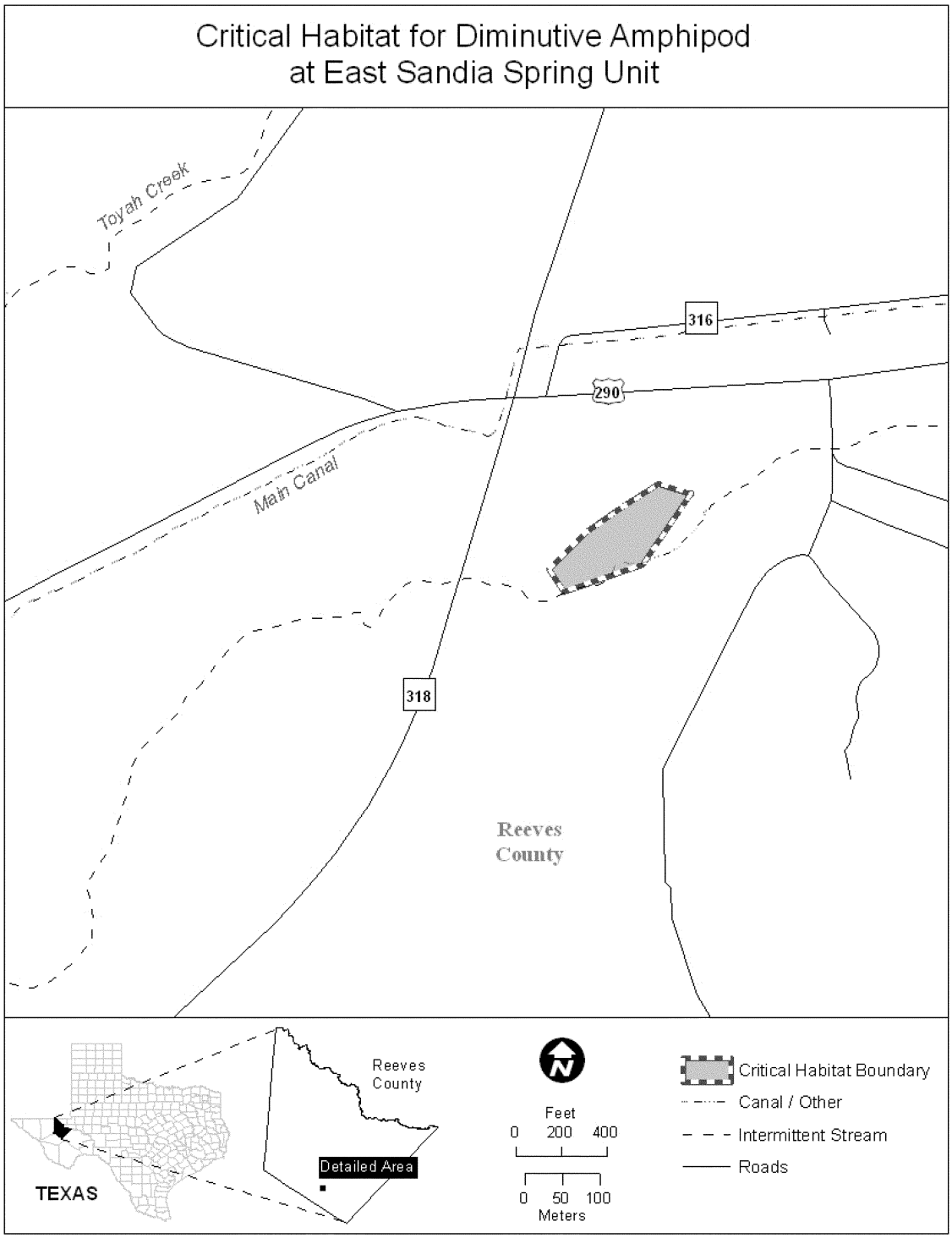
(4) *Critical habitat map units.* Data layers defining map units were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site (*http://www.fws.gov/southwest/es/AustinTexas/*), Regulations.gov (*http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0029) and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) San Solomon Spring Unit, Reeves County, Texas. Map of San Solomon Spring Unit follows:

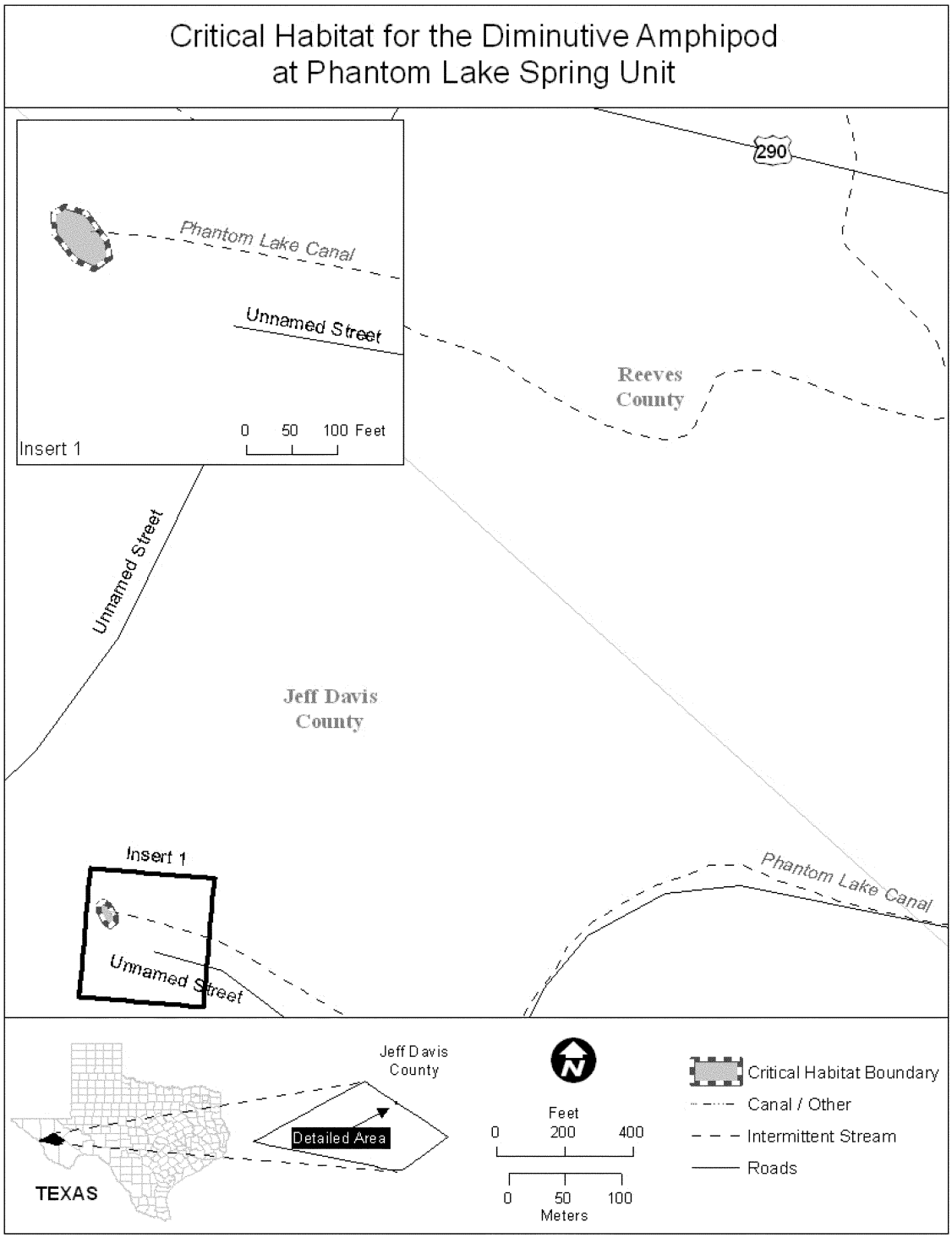


(6) Giffin Spring Unit, Reeves County, Texas. Map of Giffin Spring Unit is provided at paragraph (5) of this entry.

(7) East Sandia Spring Unit, Jeff Davis County, Texas. Map of East Sandia Spring Unit follows:



(8) Phantom Lake Spring Unit, Jeff Davis County, Texas. Map of Phantom Lake Spring Unit follows:



* * * * *

Pecos amphipod *(Gammarus pecos)*

(1) The critical habitat unit is depicted for Pecos County, Texas, on the map below.

(2) Within this area, the primary constituent elements of the physical or biological features essential to the conservation of Pecos amphipod are springs and spring-fed aquatic systems that contain:

(i) Permanent, flowing, unpolluted water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Water temperatures that vary between 11 and 27 °C (52 to 81 °F) with natural seasonal and diurnal variations slightly above and below that range;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, maturing, feeding, and escape from predators;

(iv) Abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage; and

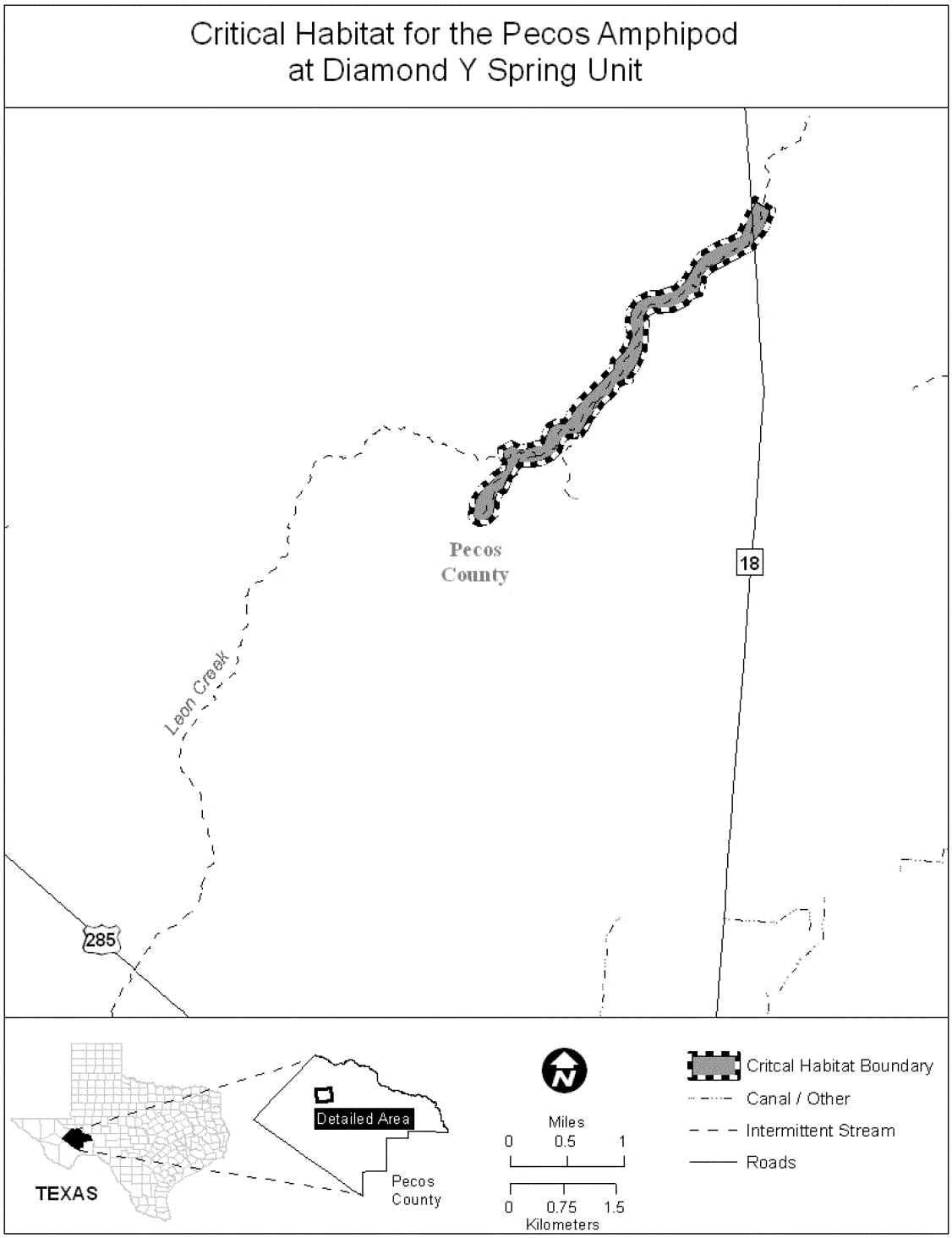
(v) Either an absence of nonnative predators and competitors or nonnative

predators and competitors at low population levels.

(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) *Critical habitat map units.* Data layers defining map units were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site (*http://www.fws.gov/southwest/es/AustinTexas/*), Regulations.gov (*http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0029) and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Diamond Y Spring Unit, Pecos County, Texas. Map of Diamond Y Spring Unit follows:



* * * * *

Dated: August 2, 2012.

Eileen Sobeck,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–19829 Filed 8–15–12; 8:45 am]

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FEDERAL REGISTER

Vol. 77 Thursday,

No. 159 August 16, 2012

Part IV

Department of Education

Applications for New Awards; Race to the Top—District; Notice

DEPARTMENT OF EDUCATION

Applications for New Awards; Race to the Top—District

AGENCY: Office of the Deputy Secretary, Department of Education.

ACTION: Notice.

Overview Information

Race to the Top—District

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.416.

DATES: *Applications Available:* August 16, 2012.

Deadline for Notice of Intent to Apply: August 30, 2012.

Note: Submission of a notice of intent to apply is optional.

Date of Application Webinar: August 16 and 21, 2012.

Deadline for Transmittal of Applications: October 30, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program

The purpose of the Race to the Top—District competition is to build on the lessons learned from the State competitions conducted under the Race to the Top program and to support bold, locally directed improvements in learning and teaching that will directly improve student achievement and educator effectiveness.

Background

Race to the Top

The Race to the Top program, authorized under the American Recovery and Reinvestment Act (ARRA) (Pub. L. 111–5), is centered on four core educational reform areas:

(a) Adopting standards and assessments that prepare students to succeed in college and the workplace and to compete in the global economy;

(b) Building data systems that measure student growth and success and inform teachers and principals about how they can improve instruction;

(c) Recruiting, developing, rewarding, and retaining effective teachers and principals, especially where they are needed most; and

(d) Turning around the Nation's lowest-achieving schools.

In 2010, the U.S. Department of Education (Department) conducted Race to the Top State competitions, which provided incentives to States to adopt bold and comprehensive reforms in elementary and secondary education and laid the foundation for unprecedented innovation. A total of 46 States and the District of Columbia put together plans to implement college- and career-ready standards, use data systems to guide teaching and learning, evaluate and support teachers and school leaders, and turn around their lowest-performing schools. The Race to the Top State competitions provided States with incentives to implement large-scale, system-changing reforms designed to improve student achievement, narrow achievement gaps, and increase graduation and college enrollment rates.

Through the Race to the Top Assessment program, also authorized under ARRA, the Department is supporting consortia of States in the development of new and better assessments aligned with high standards.

In 2011, the ARRA was amended by section 1832(b) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10), which added an additional education reform area: Strengthening the quality of early learning and development programs and increasing access to high-quality early learning programs for all children, including those with high needs. As a result, the Department had the authority to use a portion of the FY 2011 appropriation for Race to the Top on the Race to the Top Early Learning Challenge program, which is jointly administered by the Departments of Education and Health and Human Services. The Race to the Top Early Learning Challenge supports nine States' efforts to strengthen the quality of their early learning programs.

Race to the Top—District Competition

On May 22, 2012, the Secretary announced the Race to the Top—District competition, which is designed to build on the momentum of other Race to the Top competitions by encouraging bold, innovative reform at the local level. This district-level FY 2012 competition is authorized under sections 14005 and 14006 of the ARRA, as amended by section 1832(b) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 and the Department of Education Appropriations Act, 2012 (Title III of Division F of Pub. L. 112–74, the Consolidated Appropriations Act, 2012). Congress appropriated approximately $550 million for Race to the Top in FY 2012. Of these funds, the Department expects to use approximately $383 million for this competition, which will fund about 15–25 grants in the range of $5 to $40 million. The amount of an award for which an applicant is eligible to apply depends upon the number of students who would be served under the application.

The Race to the Top—District competition is aimed squarely at classrooms and the all-important relationship between educators and students. This notice invites applicants to demonstrate how they can personalize education for all students in their schools.

In that regard, the Race to the Top—District competition will encourage and reward those local educational agencies (LEAs) or consortia of LEAs that have the leadership and vision to implement the strategies, structures, and systems needed to implement personalized, student-focused approaches to learning and teaching that will produce excellence and ensure equity for all students. The priorities, definitions, requirements, and selection criteria in this notice are designed to help LEAs meet these goals.

Under Absolute Priority 1, applicants must design a personalized learning environment that will use collaborative, data-based strategies and 21st century tools such as online learning platforms, computers, mobile devices, and learning algorithms, to deliver instruction and supports tailored to the needs and goals of each student, with the aim of enabling all students to graduate college- and career-ready. Implementation of a personalized learning environment is not achieved through a single solution or product but rather requires a multi-faceted approach that addresses the individual and collective needs of students, educators, and families and that dramatically transforms the learning environment in order to improve student outcomes.

The Secretary believes that teacher and student classroom interaction, supported by strong principals and engaged families, is crucial to educating students. Teacher and student interactions are strengthened when an effective teacher has useful information about students' particular needs, support from his or her principal or leadership team, a quality curriculum aligned with college- and career-ready standards, and the other tools needed to do the job.

Too often, however, these supportive conditions have not existed in our schools or districts, and the results are painfully predictable: students fall behind or drop out, achievement gaps remain or widen, teachers get frustrated and leave the field, and stakeholders

become polarized and divided under pressure to perform.

That is why—for more than three years—the Department has supported bold reforms at the State and local levels that have reduced barriers to good teaching and helped create better conditions for learning.

There is no single approach or boutique solution to implementation of personalized learning environments. An LEA or consortia of LEAs receiving an award under this competition will build on the lessons learned from and the progress of States and districts in implementing reforms in the four core educational assurance areas (as defined in this notice) through Race to the Top and other key programs. A successful applicant will provide teachers the information, tools, and supports that enable them to meet the needs of each student and substantially accelerate and deepen each student's learning. These LEAs will have the policies, systems, infrastructure, capacity, and culture to enable teachers, teacher teams, and school leaders to continuously focus on improving individual student achievement and closing achievement gaps. These LEAs will also make equity and access a priority and aim to prepare each student to master the content and skills required for college- and career-readiness, provide each student the opportunity to pursue a rigorous course of study, and accelerate and deepen students' learning through attention to their individual needs. As important, they will create opportunities for students to identify and pursue areas of personal academic interest—all while ensuring that each student masters critical areas identified in college- and career-ready standards or college- and career-ready high school graduation requirements.

Educators want a way to inspire and challenge those students who are furthest ahead, provide targeted help and assistance to those furthest behind, and engage fully and effectively with the students in the middle. To accomplish this objective, educators across the country have created personalized learning environments and used strategies that involve such elements as technology, virtual and blended learning, individual and group tasks, partnering with parents, and aligning non-school hours with the educational needs of students.

Personalized learning environments allow students to: understand their individual learning goals and needs; access deep learning experiences that include individual and group tasks; and develop such skills and traits as goal setting, teamwork, perseverance, critical thinking, communications, creativity, and problem solving across multiple academic domains. If students are to do this successfully, both students and educators need opportunities to build their individual and collective capacity to support the implementation of personalized learning environments and strategies.

The Race to the Top—District competition does not create new stand-alone programs, or support niche programs or interventions. Neither is it a vehicle for maintenance of the status quo. Rather, the Race to the Top—District competition will support LEAs that demonstrate their commitment to identifying teachers, principals, and schools who have a vision and the expertise to personalize education and extend their reach to all of their students. LEAs successfully implementing an approach to learning and teaching that includes personalized learning environments will lay a foundation for raising student achievement, decreasing the achievement gap across student groups, and increasing the rates at which students graduate from high school prepared for college and careers.

Through Race to the Top—District, the Department plans to support high-quality proposals from applicants across a varied set of LEAs to create diverse models of personalized learning environments for use by LEAs across the Nation. For this reason, in addition to an absolute priority on personalized learning environments, the Department is establishing four additional absolute priorities in this notice; each applicant will meet one of Absolute Priorities 2 through 5. These absolute priorities will support efforts to expand the types of reform efforts being implemented in LEAs in States that have received a Race to the Top award and to LEAs in other States. Moreover, these absolute priorities will help ensure that LEAs of varying sizes, both rural and non-rural, and with different local contexts are able to implement innovative personalized learning environments for their students that can serve as models for other LEAs and help improve student achievement widely.

The competitive preference priority we are establishing will reward applicants that propose to extend their reforms beyond the classroom and partner with public or private entities in order to address the social, emotional, and behavioral needs of students, particularly students who attend a high-need school.

As explained more fully elsewhere in this notice, given the tight timeline for obligating funds and in order to provide districts maximum time to prepare their applications for this competition, the Department is waiving notice-and-comment rulemaking for this competition. Specifically, we are waiving rulemaking for the priorities, requirements, definitions, and selection criteria for this new competition under section 437(d)(1) of the General Education Provisions Act (GEPA).

However, we solicited public participation as we developed our approach to this competition. From May 22 to June 8, 2012, we posted on the Department's Web site and blog a draft Executive Summary of the competition, which included draft competition priorities, requirements, definitions, and selection criteria, and we invited public input on each. We received approximately 475 responses reflecting the viewpoints of a variety of individuals and organizations, which we considered in our development of this notice. That Executive Summary and the comments we received are posted at *www.ed.gov/race-top/district-competition.*

Priorities: We are establishing these priorities for the FY 2012 grant competition only and any subsequent year in which we make awards from the list of unfunded applicants from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priorities: These priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet Absolute Priority 1 and one of Absolute Priorities 2 through 5.

These priorities are:

Absolute Priority 1: Personalized Learning Environments. To meet this priority, an applicant must coherently and comprehensively address how it will build on the core educational assurance areas (as defined in this notice) to create learning environments that are designed to significantly improve learning and teaching through the personalization of strategies, tools, and supports for students and educators that are aligned with college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice); accelerate student achievement and deepen student learning by meeting the academic needs of each student; increase the effectiveness of educators; expand student access to the most effective educators; decrease achievement gaps across student groups; and increase the rates at which students graduate from

high school prepared for college and careers.

Absolute Priority 2: Non-Rural LEAs in Race to the Top States. To meet this priority, an applicant must be an LEA or a consortium of LEAs in which more than 50 percent of participating students (as defined in this notice) are in non-rural LEAs in States that received awards under the Race to the Top Phase 1, Phase 2, or Phase 3 competition.

Absolute Priority 3: Rural LEAs in Race to the Top States. To meet this priority, an applicant must be an LEA or a consortium of LEAs in which more than 50 percent of participating students (as defined in this notice) are in rural LEAs (as defined in this notice) in States that received awards under the Race to the Top Phase 1, Phase 2, or Phase 3 competition.

Absolute Priority 4: Non-Rural LEAs in non-Race to the Top States. To meet this priority, an applicant must be an LEA or a consortium of LEAs in which more than 50 percent of participating students (as defined in this notice) are in non-rural LEAs in States that did not receive awards under the Race to the Top Phase 1, Phase 2, or Phase 3 competition.

Absolute Priority 5: Rural LEAs in non-Race to the Top States. To meet this priority, an applicant must be an LEA or a consortium of LEAs in which more than 50 percent of participating students (as defined in this notice) are in rural LEAs (as defined in this notice) in States that did not receive awards under the Race to the Top Phase 1, Phase 2, or Phase 3 competition.

Competitive Preference Priority: This priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Competitive Preference Priority: Results, Resource Alignment, and Integrated Services. The Department will give priority to an applicant based on the extent to which the applicant proposes to integrate public or private resources in a partnership designed to augment the schools' resources by providing additional student and family supports to schools that address the social, emotional, or behavioral needs of the participating students (as defined in this notice), giving highest priority to students in participating schools with high-need students (as defined in this notice). To meet this priority, an applicant's proposal does not need to be comprehensive and may provide student and family supports that focus on a subset of these needs.

To meet this priority, an applicant must—

(1) Provide a description of the coherent and sustainable partnership that it has formed with public or private organizations, such as public health, before-school, after-school, and social service providers; integrated student service providers; businesses, philanthropies, civic groups, and other community-based organizations; early learning programs; and postsecondary institutions to support the plan described in Absolute Priority 1;

(2) Identify not more than 10 population-level desired results for students in the LEA or consortium of LEAs that align with and support the applicant's broader Race to the Top—District proposal. These results must include both educational results and other education outcomes (e.g., children enter kindergarten prepared to succeed in school, children exit third grade reading at grade level, and students graduate from high school college- and career-ready) and family and community supports (as defined in this notice) results;

(3) Describe how the partnership would—

(a) Track the selected indicators that measure each result at the aggregate level for all children within the LEA or consortium and at the student level for the participating students (as defined in this notice);

(b) Use the data to target its resources in order to improve results for participating students (as defined in this notice), with special emphasis on students facing significant challenges, such as students with disabilities, English learners, and students affected by poverty (including highly mobile students), family instability, or other child welfare issues;

(c) Develop a strategy to scale the model beyond the participating students (as defined in this notice) to at least other high-need students (as defined in this notice) and communities in the LEA or consortium over time; and

(d) Improve results over time;

(4) Describe how the partnership would, within participating schools (as defined in this notice), integrate education and other services (e.g., services that address social-emotional, and behavioral needs, acculturation for immigrants and refugees) for participating students (as defined in this notice);

(5) Describe how the partnership and LEA or consortium would build the capacity of staff in participating schools (as defined in this notice) by providing them with tools and supports to—

(a) Assess the needs and assets of participating students (as defined in this notice) that are aligned with the partnership's goals for improving the education and family and community supports (as defined in this notice) identified by the partnership;

(b) Identify and inventory the needs and assets of the school and community that are aligned with those goals for improving the education and family and community supports (as defined in this notice) identified by the applicant;

(c) Create a decision-making process and infrastructure to select, implement, and evaluate supports that address the individual needs of participating students (as defined in this notice) and support improved results;

(d) Engage parents and families of participating students (as defined in this notice) in both decision-making about solutions to improve results over time and in addressing student, family, and school needs; and

(e) Routinely assess the applicant's progress in implementing its plan to maximize impact and resolve challenges and problems; and

(6) Identify its annual ambitious yet achievable performance measures for the proposed population-level and describe desired results for students.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, requirements, and selection criteria. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program. The competition therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, definitions, requirements, and selection criteria in this notice.

These priorities, definitions, requirements, and selection criteria will apply to the FY 2012 competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Definitions

The definitions are:

Achievement gap means the difference in the performance between each subgroup (as defined in this notice) within a participating LEA or school and the statewide average performance of the LEA's or State's highest-achieving subgroups in reading or language arts

and in mathematics as measured by the assessments required under the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

College- and career-ready graduation requirements means minimum high school graduation expectations (e.g., completion of a minimum course of study, content mastery, proficiency on college- and career-ready assessments) that are aligned with a rigorous, robust, and well-rounded curriculum and that cover a wide range of academic and technical knowledge and skills to ensure that by the time students graduate high school, they satisfy requirements for admission into credit-bearing courses commonly required by the State's public four-year degree-granting institutions.

College- and career-ready standards means content standards for kindergarten through 12th grade that build towards college- and career-ready graduation requirements (as defined in this notice). A State's college- and career-ready standards must be either (1) standards that are common to a significant number of States; or (2) standards that are approved by a State network of institutions of higher education, which must certify that students who meet the standards will not need remedial course work at the postsecondary level.

College enrollment means the enrollment of students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) and who enroll in a public institution of higher education in the State (as defined in section 101(a) of the Higher Education Act of 1965, as amended, 20 U.S.C. 1001) within 16 months of graduation.

Consortium governance structure means the consortium's structure for carrying out its operations, including—

(1) The organizational structure of the consortium and the differentiated roles that a member LEA may hold (e.g., lead LEA, member LEA);

(2) For each differentiated role, the associated rights and responsibilities, including rights and responsibilities for adopting and implementing the consortium's proposal for a grant;

(3) The consortium's method and process (e.g., consensus, majority) for making different types of decisions (e.g., policy, operational);

(4) The protocols by which the consortium will operate, including the protocols for member LEAs to change roles or leave the consortium;

(5) The consortium's procedures for managing funds received under this grant;

(6) The terms and conditions of the memorandum of understanding or other binding agreement executed by each member LEA; and

(7) The consortium's procurement process, and evidence of each member LEA's commitment to that process.

Core educational assurance areas means the four key areas originally identified in the American Reinvestment and Recovery Act (ARRA) to support comprehensive education reform: (1) Adopting standards and assessments that prepare students to succeed in college and the workplace and to compete in the global economy; (2) building data systems that measure student growth and success, and inform teachers and principals with data about how they can improve instruction; (3) recruiting, developing, rewarding, and retaining effective teachers and principals, especially where they are needed most; and (4) turning around lowest-achieving schools.

Digital learning content means learning materials and resources that can be displayed on an electronic device and shared electronically with other users. Digital learning content includes both open source and commercial content. In order to comply with the requirements of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended, any digital learning content used by grantees must be accessible to individuals with disabilities, including individuals who use screen readers. For additional information regarding the application of these laws to technology, please refer to *www.ed.gov/ocr/letters/colleague-201105-ese.pdf* and *www.ed.gov/ocr/docs/dcl-ebook-faq-201105.pdf.*

Discipline means any disciplinary measure collected by the 2009–2010 or 2011–2012 Civil Rights Data Collection (see *http://ocrdata.ed.gov*).

Educators means all education professionals and education paraprofessionals working in participating schools (as defined in this notice), including principals or other heads of a school, teachers, other professional instructional staff (e.g., staff involved in curriculum development, staff development, bilingual/English as a Second Language (ESL) specialists, or instructional staff who operate library, media, and computer centers), pupil support services staff (e.g., guidance counselors, nurses, speech pathologists), other administrators (e.g., assistant principals, discipline specialists), and education paraprofessionals (e.g., assistant teachers, bilingual/ESL instructional aides).

Effective principal means a principal whose students, overall and for each subgroup, achieve acceptable rates (e.g., at least one grade level in an academic year) of student growth (as defined in this notice) as defined in the LEA's principal evaluation system (as defined in this notice).

Effective teacher means a teacher whose students achieve acceptable rates (e.g., at least one grade level in an academic year) of student growth (as defined in this notice) as defined in the LEA's teacher evaluation system (as defined in this notice).

Family and community supports means—

(1) Child and youth health programs, such as physical, mental, behavioral, and emotional health programs (e.g., home visiting programs; Head Start; Early Head Start; programs to improve nutrition and fitness, reduce childhood obesity, and create healthier communities);

(2) Safety programs, such as programs in school and out of school to prevent, control, and reduce crime, violence, drug and alcohol use and gang activity; programs that address classroom and school-wide behavior and conduct; programs to prevent child abuse and neglect; programs to prevent truancy and reduce and prevent bullying and harassment; and programs to improve the physical and emotional security of the school setting as perceived, experienced, and created by students, staff, and families;

(3) Community stability programs, such as programs that: (a) Provide adult education and employment opportunities and training to improve educational levels, job skills, and readiness in order to decrease unemployment, with a goal of increasing family stability; (b) improve families' awareness of, access to, and use of a range of social services, if possible at a single location; (c) provide unbiased, outcome-focused, and comprehensive financial education, inside and outside the classroom and at every life stage; (d) increase access to traditional financial institutions (e.g., banks and credit unions) rather than alternative financial institutions (e.g., check cashers and payday lenders); (e) help families increase their financial literacy, financial assets, and savings; and (f) help families access transportation to education and employment opportunities; (g) provides supports and services to students who are homeless, in foster care, migrant, or highly mobile; and

(4) Family and community engagement programs that are systemic, integrated, sustainable, and continue through a student's transition from K–12 schooling to college and career. These programs may include family literacy

programs and programs that provide adult education and training and opportunities for family members and other members of the community to support student learning and establish high expectations for student educational achievement; mentorship programs that create positive relationships between children and adults; programs that provide for the use of such community resources as libraries, museums, television and radio stations, and local businesses to support improved student educational outcomes; programs that support the engagement of families in early learning programs and services; programs that provide guidance on how to navigate through a complex school system and how to advocate for more and improved learning opportunities; and programs that promote collaboration with educators and community organizations to improve opportunities for healthy development and learning.

Four intervention models means the turnaround model, restart model, school closure, and transformational model as defined by the final requirements for the School Improvement Grant (SIG) program, published in the **Federal Register** on October 28, 2010 (75 FR 66363).

Graduation rate means the four-year or extended-year adjusted cohort graduation rate as defined by 34 CFR 200.19(b)(1).

High-need students means students at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools (as defined in this notice), who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

High-minority school is defined by the LEA in a manner consistent with its State's Teacher Equity Plan, as required by section 1111(b)(8)(C) of the ESEA. The LEA must provide, in its Race to the Top—District application, the definition used.

Highly effective principal means a principal whose students, overall and for each subgroup, achieve high rates (e.g., one and one-half grade levels in an academic year) of student growth (as defined in this notice) as defined under the LEAs principal evaluation system (as defined in this notice).

Highly effective teacher means a teacher whose students achieve high rates (e.g., one and one-half grade levels in an academic year) of student growth (as defined in this notice) as defined under the LEAs teacher evaluation system (as defined in this notice).

Interoperable data system means a system that uses a common, established structure such that data can easily flow from one system to another and in which data are in a non-proprietary, open format.

Local educational agency is an entity as defined in section 9101(26) of the ESEA, except that an entity described under section 9101(26)(D) must be recognized under applicable State law as a local educational agency.

Low-performing school means a school that is in the bottom 10 percent of performance in the State, or that has significant achievement gaps, based on student academic performance in reading/language arts and mathematics on the assessments required under the ESEA, or that has a graduation rate (as defined in this notice) below 60 percent.

Metadata means information about digital learning content such as the grade or age for which it is intended, the topic or standard to which it is aligned, or the type of resource it is (e.g., video, image).

On-track indicator means a measure, available at a time sufficiently early to allow for intervention, of a single student characteristic (e.g., number of days absent, number of discipline referrals, number of credits earned), or a composite of multiple characteristics, that is both predictive of student success (e.g., students demonstrating the measure graduate at an 80 percent rate) and comprehensive of students who succeed (e.g., of all graduates, 90 percent demonstrated the indicator). Using multiple indicators that are collectively comprehensive but vary by student characteristics may be an appropriate alternative to a single indicator that applies to all students.

Open data format means data that are available in a non-proprietary, machine-readable format (e.g., Extensible Markup Language (XML) and JavaScript Object Notation (JSON)) such that they can be understood by a computer. Digital formats that require extraction, data translation such as optical character recognition, or other manipulation in order to be used in electronic systems are not machine-readable formats.

Open-standard registry means a digital platform, such as the Learning Registry, that facilitates the exchange of information about digital learning content (as defined in this notice), including (1) alignment of content with college- and career-ready standards (as defined in this notice) and (2) usage information about learning content used by educators (as defined in this notice). This digital platform must have the capability to share content information with other LEAs and with State educational agencies.

Participating school means a school that is identified by the applicant and chooses to work with the applicant to implement the plan under Absolute Priority 1, either in one or more specific grade spans or subject areas or throughout the entire school and affecting a significant number of its students.

Participating student means a student enrolled in a participating school (as defined in this notice) and who is directly served by an applicant's plan under Absolute Priority 1.

Persistently lowest-achieving school means, as determined by the State, consistent with the requirements of the SIG program authorized by section 1003(g) of the ESEA,[1] (1) any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (2) any secondary school that is eligible for, but does not receive, Title I funds that (a) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the lowest-achieving schools, a State must take into account both (1) the academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading or language arts and in mathematics combined; and (2) the school's lack of progress on those assessments over a number of years in the ''all students'' group.

Principal evaluation system means a system that: (1) Is used for continual improvement of instructional

[1] The Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants Program (see 75 FR 66363) as part of a State's approved FY 2009 or FY 2010 applications to be persistently lowest-achieving schools. A list of these Tier I and Tier II schools can be found on the Department's Web site at *http://www2.ed.gov/programs/sif/index.html*

leadership; (2) meaningfully differentiates performance using at least three performance levels; (3) uses multiple valid measures in determining performance levels, including, as a significant factor, data on student growth (as defined in this notice) for all students (including English learners and students with disabilities), as well as other measures of professional practice (which may be gathered through multiple formats and sources, such as observations based on rigorous leadership performance standards, teacher evaluation data, and student and parent surveys); (4) evaluates principals on a regular basis; (5) provides clear, timely, and useful feedback, including feedback that identifies and guides professional development needs; and (6) is used to inform personnel decisions.

Rural local educational agency means an LEA, at the time of the application, that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/programs/reapsrsa/eligible12/index.html.*

School leadership team means a team that leads the implementation of improvement and other initiatives at the school and is composed of the principal or other head of a school, teachers, and other educators (as defined in this notice), and, as applicable, other school employees, parents, students, and other community members. In cases where statute or local policy, including collective bargaining agreements, establishes a school leadership team, that body shall serve as the school leadership team for the purpose of this program.

Student growth means the change in student achievement for an individual student between two or more points in time, defined as—

(1) For grades and subjects in which assessments are required under ESEA section 1111(b)(3): (a) A student's score on such assessments; and (b) may include other measures of student learning, such as those described in (2) below, provided they are rigorous and comparable across schools within an LEA.

(2) For grades and subjects in which assessments are not required under ESEA section 1111(b)(3): Alternative measures of student learning and performance, such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; performance against student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools within an LEA.

Student-level data means demographic, performance, and other information that pertains to a single student.

Student performance data means information about the academic progress of a single student, such as formative and summative assessment data, information on completion of coursework, instructor observations, information about student engagement and time on task, and similar information.

Subgroup means each category of students identified under section 1111(b)(2)(C)(v)(II) of the ESEA, as well as any combined subgroup used in the State accountability system and approved by the Department in a State's request for ESEA flexibility.

Superintendent evaluation means a rigorous, transparent, and fair annual evaluation of an LEA superintendent that provides an assessment of performance and encourages professional growth. This evaluation must reflect: (1) The feedback of many stakeholders, including but not limited to educators, principals, and parents; and (2) student outcomes.

Teacher evaluation system means a system that: (1) Is used for continual improvement of instruction; (2) meaningfully differentiates performance using at least three performance levels; (3) uses multiple valid measures in determining performance levels, including, as a significant factor, data on student growth (as defined in this notice) for all students (including English learners and students with disabilities), as well as other measures of professional practice (which may be gathered through multiple formats and sources, such as observations based on rigorous teacher performance standards, teacher portfolios, and student and parent surveys); (4) evaluates teachers on a regular basis; (5) provides clear, timely, and useful feedback, including feedback that identifies and guides professional development needs; and (6) is used to inform personnel decisions.

Teacher of record means an individual (or individuals in a co-teaching assignment) who has been assigned the lead responsibility for a student's learning in a subject or course.

Application Requirements

The application requirements are:

(1) *State comment period.* Each LEA included in an application must provide its State at least 10 business days to comment on the LEA's application and submit as part of its application package–

(a) The State's comments or, if the State declined to comment, evidence that the LEA offered the State 10 business days to comment; and

(b) The LEA's response to the State's comments (optional).

(2) *Mayor (or city or town administrator) comment period.* Each LEA included in an application must provide its mayor or other comparable official at least 10 business days to comment on the LEA's application and submit as part of its application package—

(a) The mayor or city or town administrator's comments or, if that individual declines to comment, evidence that the LEA offered such official 10 business days to comment; and

(b) The LEA's response to the mayor or city or town administrator comments (optional).

(3) *Consortium.* For LEAs applying as a consortium, the application must–

(a) Indicate, consistent with 34 CFR 75.128, whether—

(i) One member of the consortium is applying for a grant on behalf of the consortium; or

(ii) The consortium has established itself as a separate, eligible legal entity and is applying for a grant on its own behalf;

(b) Be signed by–

(i) If one member of the consortium is applying for a grant on behalf of the consortium, the superintendent or chief executive officer (CEO), local school board president, and local teacher union or association president (where applicable) of that LEA; or

(ii) If the consortium has established itself as a separate eligible legal entity and is applying for a grant on its own behalf, a legal representative of the consortium; and

(c) Include, consistent with 34 CFR 75.128, for each LEA in the consortium, copies of all memoranda of understanding or other binding agreements related to the consortium. These binding agreements must—

(i) Detail the activities that each member of the consortium plans to perform;

(ii) Describe the consortium governance structure (as defined in this notice);

(iii) Bind each member of the consortium to every statement and assurance made in the application; and

(iv) Include an assurance signed by the LEA's superintendent or CEO that—

(A) The LEA, at a minimum, will implement no later than the 2014–2015 school year—

(*1*) A teacher evaluation system (as defined in this notice);

(*2*) A principal evaluation system (as defined in this notice); and

(*3*) A superintendent evaluation (as defined in this notice);

(B) The LEA is committed to preparing students for college or career, as demonstrated by—

(*1*) Being located in a State that has adopted college- and career-ready standards (as defined in this notice); or

(*2*) Measuring all student progress and performance against college- and career-ready graduation requirements (as defined in this notice);

(C) The LEA has a robust data system that has, at a minimum—

(*1*) An individual teacher identifier with a teacher-student match; and

(*2*) The capability to provide timely data back to educators and their supervisors on student growth (as defined in this notice);

(D) The LEA has the capability to receive or match student-level preschool through 12th grade and higher education data; and

(E) The LEA ensures that any disclosure of or access to personally identifiable information in students' education records complies with the Family Educational Rights and Privacy Act (FERPA); and

(iv) Be signed by the superintendent or CEO, local school board president, and local teacher union or association president (where applicable).

Program Requirements

The program requirements are:

(1) An applicant's budget request for all years of its project must fall within the applicable budget range as follows:

Number of participating students	Award range in (millions)
2,000–5,000 or Fewer than 2,000, provided those students are served by a consortium of at least 10 LEAs and at least 75 percent of the students served by each LEA are participating students (as defined in this notice)	$5–10
5,001–10,000	$10–20
10,001–25,000	20–30
25,001+	30–40

The Department will not consider an application that requests a budget outside the applicable range of awards, not including any optional budget supplements included in the application.

(2) A grantee must work with the Department and with a national evaluator or another entity designated by the Department to ensure that data collection and program design are consistent with plans to conduct a rigorous national evaluation of the program and of specific solutions and strategies pursued by individual grantees. This commitment must include, but need not be limited to—

(i) Consistent with 34 CFR 80.36 and State and local procurement procedures, grantees must include in contracts with external vendors provisions that allow contractors to provide implementation data to the LEA, the Department, the national evaluator, or other appropriate entities in ways consistent with all privacy laws and regulations.

(ii) Developing, in consultation with the national evaluator, a plan for identifying and collecting reliable and valid baseline data for program participants.

(3) LEAs must share metadata about content alignment with college- and career-ready standards (as defined in this notice) and use through open-standard registries.

(4) LEAs in which minority students or students with disabilities are disproportionately subject to discipline (as defined in this notice) and expulsion (according to data submitted through the Department's Civil Rights Data Collection, which is available at *http://ocrdata.ed.gov/*), must conduct a district assessment of the root causes of the disproportionate discipline and expulsions. These LEAs must also develop a detailed plan over the grant period to address these root causes and to reduce disproportionate discipline (as defined in this notice) and expulsions.

(5) Each grantee must make all project implementation and student data available to the Department and its authorized representatives in compliance with FERPA, as applicable.

(6) Grantees must ensure that requests for information (RFIs) and requests for proposal (RFPs) developed as part of this grant are made public, and are consistent with the requirements of State and local law.

(7) Within 100 days of award, each grantee must submit to the Department—

(i) A scope of work that is consistent with its grant application and includes specific goals, activities, deliverables, timelines, budgets, key personnel, and annual targets for key performance measures; and

(ii) An individual school implementation plan for participating schools (as defined in this notice).

(8) Within 100 days of award, each grantee must demonstrate that at least 40 percent of participating students (as defined in this notice) in participating schools (as defined in this notice) are from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use to make awards under section 1113(a) of the ESEA.

Program Authority: Sections 14005 and 14006 of the ARRA (Pub. L. 111–5), as amended by section 1832(b) of Division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10), and the Department of Education Appropriations Act, 2012 (Title III of Division F of Pub. L. 112–74, the Consolidated Appropriations Act, 2012).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: Nothing in this notice shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $383,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 or subsequent fiscal years from the list of unfunded applicants from this competition.

The Department may use any unused funds from Phase 2 of the Race to the Top Early Learning Challenge program in the Race to the Top—District competition. Phase 2 of the Race to the Top Early Learning Challenge competition will be announced in a separate notice published in the **Federal Register**. Conversely, the Department of Education may use any unused FY 2012 funds from the Race to the Top—District competition under Phase 2 of the Race

to the Top Early Learning Challenge competition.

Estimated Range of Awards: $5,000,000—$40,000,000.

Estimated Range of Awards and Maximum Awards: The following chart illustrates the range for awards by the number of participating students:

Number of participating students	Award range in (millions)
2,000–5,000 or Fewer than 2,000, provided those students are served by a consortium of at least 10 LEAs and at least 75 percent of the students served by each LEA are participating students (as defined in this notice)	$5–10
5,001–10,000	10–20
10,001–25,000	20–30
25,001+	30–40

We will not consider an application that requests a budget outside the applicable range of awards, not including any optional budget supplements included in the application. The Department may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 15–25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

(1) *Eligible applicants:* To be eligible for a grant under this competition:

(a) An applicant must be an individual LEA (as defined in this notice) or a consortium of LEAs from the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(i) LEAs may apply for all or a portion of their schools, for specific grades, or for subject-area bands (e.g., lowest-performing schools, secondary schools, schools connected by a feeder pattern, middle school math, or preschool through third grade).

(ii) Consortia may include LEAs from multiple States.

(iii) Each LEA may participate in only one Race to the Top—District application.

(b) An applicant must serve a minimum of 2,000 participating students (as defined in this notice) or may serve fewer than 2,000 participating students (as defined in this notice) provided those students are served by a consortium of at least 10 LEAs and at least 75 percent of the students served by each LEA are participating students (as defined in this notice).

(c) At least 40 percent of participating students (as defined in this notice) across all participating schools (as defined in this notice) must be students from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use to make awards under section 1113(a) of the ESEA. If an applicant has not identified all participating schools (as defined in this notice) at the time of application, it must provide an assurance that within 100 days of the grant award it will meet this requirement.

(d) An applicant must demonstrate its commitment to the core educational assurance areas (as defined in this notice), including, for each LEA included in an application, an assurance signed by the LEA's superintendent or CEO that—

(i) The LEA, at a minimum, will implement no later than the 2014–2015 school year—

(A) A teacher evaluation system (as defined in this notice);

(B) A principal evaluation system (as defined in this notice); and

(C) A superintendent evaluation (as defined in this notice);

(ii) The LEA is committed to preparing all students for college or career, as demonstrated by—

(A) Being located in a State that has adopted college- and career-ready standards (as defined in this notice); or

(B) Measuring all student progress and performance against college- and career-ready graduation requirements (as defined in this notice);

(iii) The LEA has a robust data system that has, at a minimum—

(A) An individual teacher identifier with a teacher-student match; and

(B) The capability to provide timely data back to educators and their supervisors on student growth (as defined in this notice);

(iv) The LEA has the capability to receive or match student-level preschool-through-12th grade and higher education data; and

(v) The LEA ensures that any disclosure of or access to personally identifiable information in students' education records complies with FERPA.

(e) Required signatures for the LEA or lead LEA in a consortium are those of the superintendent or CEO, local school board president, and local teacher union or association president (where applicable).

(2) *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet or from the Department of Education. To obtain a copy via the Internet, use the following address: *www.ed.gov/programs/racetothetop-district.* To obtain a copy from the Department of Education, write, fax, or call the following: Meredith Farace, U.S. Department of Education, 400 Maryland Avenue SW., room 7e208, Washington, DC 20202–4260. Telephone: (202) 453–6800. FAX: (202) 401–1557.

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2.a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: August 30, 2012. We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by completing a Web-based form. When completing this form, applicants will provide (1) the applicant's name and address; (2) whether the applicant is applying as an individual LEA or as a consortium of LEAs; (3) expected budget request; and (4) contact person (and phone number and email). Applicants may access this form online at *http://www2.ed.gov/surveys/intent-rttd.html.* Applicants that do not complete this form may still apply for funding.

Page Limit: The application narrative is where you, the applicant, address the selection criteria and the competitive preference priority that reviewers use to evaluate your application. We recommend you limit the application narrative to no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Each page has a page number.

• Line spacing for the narrative is set to 1.5 spacing, and the font used is 12 point Times New Roman.

The recommended page limit does not apply to the cover sheet; Parts X and XI, the budget sections, including the narrative budget justification; Parts IV–VII, the assurances and certifications; the resumes, the letters of support, or other appendices. However, the recommended page limit does apply to all of the application narrative section.

b. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for the Race to the Top—District, an application may include business information that the applicant considers proprietary. The Department's regulations define ''business information'' in 34 CFR 5.11.

Following the process used with our previous Race to the Top competitions, we plan to post funded applications on our Web site and you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In an attachment in the Appendix, titled ''Disclosure Exemption,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: August 16, 2012.

Deadline for Notice of Intent To Apply: August 31, 2012. Submission of a notice of intent to apply is optional.

Date of Application Webinar: August 16 and 21, 2012.

Deadline for Transmittal of Applications: October 30, 2012.

Applications for grants under this competition must be submitted in electronic format on a CD or DVD, with CD–ROM or DVD–ROM preferred, by mail or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted in electronic format on a CD or DVD, with CD–ROM or DVD–ROM preferred, by mail or hand delivery. Individual LEA applicants must submit signed originals of Parts IV, V, and VII of the application and the applicant LEAs for a consortium application must submit signed originals of Parts IV, VI, VII of the application and a signed memorandum of understanding from each member LEA of the consortia (as described in Part XIII of the application).

All electronic application files must be in a .DOC (document), .DOCX (document), .RTF (rich text), or .PDF (Portable Document) format. Each file name should clearly identify the part of the application it contains. If an applicant submits a file type other than the four file types specified in this paragraph, the Department will not review that material. Applicants should not password-protect these files. The CD or DVD containing the application should be clearly labeled with the applicant's name, city, State, and any other relevant information.

We strongly recommend the applicant to submit a CD or DVD of its application that includes the following files: (1) A single file that contains the body of the application, including required budget tables, that has been converted into a .PDF format so that the .PDF is searchable. Note that a .PDF created from a scanned document will not be searchable. (2) A single file in a .PDF format that contains all of the required signature pages. The signature pages may be scanned and turned into a PDF. (3) Copies of the completed electronic budget spreadsheets with the required budget tables, which should be in a separate file from the body of the application. The spreadsheets will be used by the Department for budget reviews. Each of these items must be clearly labeled with the LEA's name, city, state, and any other relevant identifying information. Applicants also should not password-protect these files.

The Department must receive the application by 4:30:00 p.m., Washington, DC time, on or before the application deadline date.

a. Submission of Applications by Mail

If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), we must receive your application (i.e., the CD or DVD, and the signed originals of Parts IV–VII and memoranda of understanding, as applicable) on or before the application deadline date. Therefore to avoid delays, we strongly recommend sending the application via overnight mail. Mail the original and two copies of the application to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.416, LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

If we receive an application after the application deadline, we will not consider that application.

b. Submission of Applications by Hand Delivery

If you submit your application by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.416, 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Applications: When you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are as follows:

A. Vision

(1) The extent to which the applicant has set forth a comprehensive and coherent reform vision that builds on its work in four core educational assurance areas (as defined in this notice) and articulates a clear and credible approach to the goals of accelerating student achievement, deepening student learning, and increasing equity through personalized student support grounded in common and individual tasks that are based on student academic interests.

(2) The extent to which the applicant's approach to implementing its reform proposal (e.g., schools, grade bands, or subject areas) will support high-quality LEA-level and school-level implementation of that proposal, including—

(a) A description of the process that the applicant used or will use to select schools to participate. The process must ensure that the participating schools (as defined in this notice) collectively meet the competition's eligibility requirements;

(b) A list of the schools that will participate in grant activities (as available); and

(c) The total number of participating students (as defined in this notice), participating students (as defined in this notice) from low-income families, participating students (as defined in this notice) who are high-need students (as defined in this notice), and participating educators (as defined in this notice). If participating schools (as defined in this notice) have yet to be selected, the applicant may provide approximate numbers.

(3) The extent to which the application includes a high-quality plan describing how the reform proposal will be scaled up and translated into meaningful reform to support district-wide change beyond the participating schools (as defined in this notice), and will help the applicant reach its outcome goals (e.g., the applicant's logic model or theory of change of how its plan will improve student learning outcomes for all students who would be served by the applicant).

(4) The extent to which the applicant's vision is likely to result in improved student learning and performance and increased equity as demonstrated by ambitious yet achievable annual goals that are equal to or exceed State ESEA targets for the LEA(s), overall and by student subgroup (as defined in this notice), for each participating LEA in the following areas:

(a) Performance on summative assessments (proficiency status and growth).

(b) Decreasing achievement gaps (as defined in this notice).

(c) Graduation rates (as defined in this notice).

(d) College enrollment (as defined in this notice) rates.

Optional: The extent to which the applicant's vision is likely to result in improved student learning and performance and increased equity as demonstrated by ambitious yet achievable annual goals for each participating LEA in the following area:

(e) Postsecondary degree attainment.

B. Prior Record of Success and Conditions for Reform

The extent to which each LEA has demonstrated evidence of—

(1) A clear record of success in the past four years in advancing student learning and achievement and increasing equity in learning and teaching, including a description, charts or graphs, raw student data, and other evidence that demonstrates the applicant's ability to—

(a) Improve student learning outcomes and close achievement gaps (as defined in this notice), including by raising student achievement, high school graduation rates (as defined in this notice), and college enrollment (as defined in this notice) rates;

(b) Achieve ambitious and significant reforms in its persistently lowest-achieving schools (as defined in this notice) or in its low-performing schools (as defined in this notice); and

(c) Make student performance data (as defined in this notice) available to students, educators (as defined in this notice), and parents in ways that inform and improve participation, instruction, and services.

(2) A high level of transparency in LEA processes, practices, and investments, including by making public, by school, actual school-level expenditures for regular K–12 instruction, instructional support, pupil support, and school administration. At a minimum, this information must include a description of the extent to which the applicant already makes available the following four categories of school-level expenditures from State and local funds:

(a) Actual personnel salaries at the school level for all school-level instructional and support staff, based on the U.S. Census Bureau's classification used in the F–33 survey of local government finances (information on the survey can be found at *http://nces.ed.gov/ccd/f33agency.asp*);

(b) Actual personnel salaries at the school level for instructional staff only;

(c) Actual personnel salaries at the school level for teachers only; and

(d) Actual non-personnel expenditures at the school level (if available).

(3) Successful conditions and sufficient autonomy under State legal, statutory, and regulatory requirements to implement the personalized learning environments described in the applicant's proposal;

(4) Meaningful stakeholder engagement in the development of the proposal and meaningful stakeholder support for the proposal, including—

(a) A description of how students, families, teachers, and principals in participating schools (as defined in this notice) were engaged in the development of the proposal and, as appropriate, how the proposal was revised based on their engagement and feedback, including—

(i) For LEAs with collective bargaining representation, evidence of direct engagement and support for the proposals from teachers in participating schools (as defined in this notice); or

(ii) For LEAs without collective bargaining representation, at a minimum, evidence that at least 70 percent of teachers from participating schools (as defined in this notice) support the proposal; and

(b) Letters of support from such key stakeholders as parents and parent organizations, student organizations, early learning programs, tribes, the business community, civil rights organizations, advocacy groups, local civic and community-based organizations, and institutions of higher education; and

(5) A high-quality plan for an analysis of the applicant's current status in implementing personalized learning environments and the logic behind the reform proposal contained within the applicant's proposal, including identified needs and gaps that the plan will address.

C. Preparing Students for College and Careers

The extent to which the applicant has a high-quality plan for improving learning and teaching by personalizing the learning environment in order to provide all students the support to graduate college- and career-ready. This plan must include an approach to implementing instructional strategies for all participating students (as defined in this notice) that enable participating students to pursue a rigorous course of study aligned to college- and career-ready standards (as defined in this notice) and college- and career-ready graduation requirements (as defined in this notice) and accelerate his or her learning through support of his or her needs. The quality of the plan will be assessed based on the extent to which the applicant proposes an approach that includes the following:

(1) *Learning:* An approach to learning that engages and empowers all learners, in particular high-need students, in an age-appropriate manner such that:

(a) With the support of parents and educators, all students—

(i) Understand that what they are learning is key to their success in accomplishing their goals;

(ii) Identify and pursue learning and development goals linked to college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice), understand how to structure their learning to achieve their goals, and measure progress toward those goals;

(iii) Are able to be involved in deep learning experiences in areas of academic interest;

(iv) Have access and exposure to diverse cultures, contexts, and perspectives that motivate and deepen individual student learning; and

(v) Master critical academic content and develop skills and traits such as goal-setting, teamwork, perseverance, critical thinking, communication, creativity, and problem-solving;

(b) With the support of parents and educators, there is a strategy to ensure that each student has access to—

(i) A personalized sequence of instructional content and skill development designed to enable the student to achieve his or her individual learning goals and ensure he or she can graduate on time and college- and career-ready;

(ii) A variety of high-quality instructional approaches and environments;

(iii) High-quality content, including digital learning content (as defined in this notice) as appropriate, aligned with college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice);

(iv) Ongoing and regular feedback, including, at a minimum—-

(A) Frequently updated individual student data that can be used to determine progress toward mastery of college- and career-ready standards (as defined in this notice), or college- and career-ready graduation requirements; and

(B) Personalized learning recommendations based on the student's current knowledge and skills, college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice), and available content, instructional approaches, and supports; and

(v) Accommodations and high-quality strategies for high-need students (as defined in this notice) to help ensure that they are on track toward meeting college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice); and

(c) Mechanisms are in place to provide training and support to students that will ensure that they understand how to use the tools and resources provided to them in order to track and manage their learning.

(2) *Teaching and Leading:* An approach to teaching and leading that helps educators (as defined in this notice) to improve instruction and increase their capacity to support student progress toward meeting college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice) by enabling the full implementation of personalized learning and teaching for all students such that:

(a) All participating educators (as defined in this notice) engage in training, and in professional teams or communities, that supports their individual and collective capacity to—

(i) Support the effective implementation of personalized learning environments and strategies that meet each student's academic needs and help ensure all students can graduate on time and college- and career-ready;

(ii) Adapt content and instruction, providing opportunities for students to engage in common and individual tasks, in response to their academic needs, academic interests, and optimal learning approaches (e.g., discussion and collaborative work, project-based learning, videos, audio, manipulatives);

(iii) Frequently measure student progress toward meeting college- and career-ready standards (as defined in this notice), or college- and career-ready graduation requirements (as defined in this notice) and use data to inform both the acceleration of student progress and the improvement of the individual and collective practice of educators; and

(iv) Improve teachers' and principals' practice and effectiveness by using feedback provided by the LEA's teacher and principal evaluation systems (as defined in this notice), including frequent feedback on individual and collective effectiveness, as well as by providing recommendations, supports and interventions as needed for improvement.

(b) All participating educators (as defined in this notice) have access to, and know how to use, tools, data, and resources to accelerate student progress toward meeting college- and career-ready graduation requirements (as defined in this notice). Those resources must include—

(i) Actionable information that helps educators (as defined in this notice) identify optimal learning approaches that respond to individual student academic needs and interests;

(ii) High-quality learning resources (e.g., instructional content and assessments), including digital resources, as appropriate, that are aligned with college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice), and the tools to create and share new resources; and

(iii) Processes and tools to match student needs (see Selection Criterion

(C)(2)(b)(i)) with specific resources and approaches (see Selection Criterion (C)(2)(b)(ii)) to provide continuously improving feedback about the effectiveness of the resources in meeting student needs.

(c) All participating school leaders and school leadership teams (as defined in this notice) have training, policies, tools, data, and resources that enable them to structure an effective learning environment that meets individual student academic needs and accelerates student progress through common and individual tasks toward meeting college- and career-ready standards (as defined in this notice) or college- and career-ready graduation requirements (as defined in this notice). The training, policies, tools, data, and resources must include:

(i) Information, from such sources as the district's teacher evaluation system (as defined in this notice), that helps school leaders and school leadership teams (as defined in this notice) assess, and take steps to improve, individual and collective educator effectiveness and school culture and climate, for the purpose of continuous school improvement; and

(ii) Training, systems, and practices to continuously improve school progress toward the goals of increasing student performance and closing achievement gaps (as defined in this notice).

(d) The applicant has a high-quality plan for increasing the number of students who receive instruction from effective and highly effective teachers and principals (as defined in this notice), including in hard-to-staff schools, subjects (such as mathematics and science), and specialty areas (such as special education).

D. LEA Policy and Infrastructure

The extent to which the applicant has a high-quality plan to support project implementation through comprehensive policies and infrastructure that provide every student, educator (as defined in this notice), and level of the education system (classroom, school, and LEA) with the support and resources they need, when and where they are needed. The quality of the plan will be determined based on the extent to which—

(1) The applicant has practices, policies, and rules that facilitate personalized learning by—

(a) Organizing the LEA central office, or the consortium governance structure (as defined in this notice), to provide support and services to all participating schools (as defined in this notice);

(b) Providing school leadership teams in participating schools (as defined in this notice) with sufficient flexibility and autonomy over factors such as school schedules and calendars, school personnel decisions and staffing models, roles and responsibilities for educators and noneducators, and school-level budgets;

(c) Giving students the opportunity to progress and earn credit based on demonstrated mastery, not the amount of time spent on a topic;

(d) Giving students the opportunity to demonstrate mastery of standards at multiple times and in multiple comparable ways; and

(e) Providing learning resources and instructional practices that are adaptable and fully accessible to all students, including students with disabilities and English learners; and

(2) The LEA and school infrastructure supports personalized learning by—

(a) Ensuring that all participating students(as defined in this notice), parents, educators (as defined in this notice), and other stakeholders (as appropriate and relevant to student learning), regardless of income, have access to necessary content, tools, and other learning resources both in and out of school to support the implementation of the applicant's proposal;

(b) Ensuring that students, parents, educators, and other stakeholders (as appropriate and relevant to student learning) have appropriate levels of technical support, which may be provided through a range of strategies (e.g., peer support, online support, or local support);

(c) Using information technology systems that allow parents and students to export their information in an open data format (as defined in this notice) and to use the data in other electronic learning systems (e.g., electronic tutors, tools that make recommendations for additional learning supports, or software that securely stores personal records); and

(d) Ensuring that LEAs and schools use interoperable data systems (as defined in this notice) (e.g., systems that include human resources data, student information data, budget data, and instructional improvement system data).

E. Continuous Improvement

Because the applicant's high-quality plan represents the best thinking at a point in time, and may require adjustments and revisions during implementation, it is vital that the applicant have a clear and high-quality approach to continuously improve its plan. This will be determined by the extent to which the applicant has—

(1) A strategy for implementing a rigorous continuous improvement process that provides timely and regular feedback on progress toward project goals and opportunities for ongoing corrections and improvements during and after the term of the grant. The strategy must address how the applicant will monitor, measure, and publicly share information on the quality of its investments funded by Race to the Top—District, such as investments in professional development, technology, and staff;

(2) Strategies for ongoing communication and engagement with internal and external stakeholders; and

(3) Ambitious yet achievable performance measures, overall and by subgroup, with annual targets for required and applicant-proposed performance measures. For each applicant-proposed measure, the applicant must describe—

(a) Its rationale for selecting that measure;

(b) How the measure will provide rigorous, timely, and formative leading information tailored to its proposed plan and theory of action regarding the applicant's implementation success or areas of concern; and

(c) How it will review and improve the measure over time if it is insufficient to gauge implementation progress.

The applicant must have a total of approximately 12 to 14 performance measures.

The chart below outlines the required and applicant-proposed performance measures based on an applicant's applicable population.

Applicable population	Performance measure
All	(a) The number and percentage of participating students, by subgroup (as defined in this notice), whose teacher of record (as defined in this notice) and principal are a highly effective teacher (as defined in this notice) and a highly effective principal (as defined in this notice); and (b) The number and percentage of participating students, by subgroup (as defined in this notice), whose teacher of record (as defined in this notice) and principal are an effective teacher (as defined in this notice) and an effective principal (as defined in this notice).

Applicable population	Performance measure
PreK–3	(a) Applicant must propose at least one age- appropriate measure of students' academic growth (e.g., language and literacy development or cognition and general learning, including early mathematics and early scientific development); and (b) Applicant must propose at least one age-appropriate non-cognitive indicator of growth (e.g., physical well-being and motor development, or social-emotional development).
4–8	(a) The number and percentage of participating students, by subgroup, who are on track to college- and career-readiness based on the applicant's on-track indicator (as defined in this notice); (b) Applicant must propose at least one grade-appropriate academic leading indicator of successful implementation of its plan; and (c) Applicant must propose at least one grade-appropriate health or social-emotional leading indicator of successful implementation of its plan.
9–12	(a) The number and percentage of participating students who complete and submit the Free Application for Federal Student Aid (FAFSA) form; (b) The number and percentage of participating students, by subgroup, who are on track to college- and career-readiness based on the applicant's on-track indicator (as defined in this notice); (c) Applicant must propose at least one measure of career-readiness in order to assess the number and percentage of participating students who are or are on track to being career-ready; (d) Applicant must propose at least one grade-appropriate academic leading indicator of successful implementation of its plan; and (e) Applicant must propose at least one grade-appropriate health or social-emotional leading indicator of successful implementation of its plan.

(4) Plans to evaluate the effectiveness of Race to the Top—District funded activities, such as professional development and activities that employ technology, and to more productively use time, staff, money, or other resources in order to improve results, through such strategies as improved use of technology, working with community partners, compensation reform, and modification of school schedules and structures (e.g., service delivery, school leadership teams (as defined in this notice), and decision-making structures).

F. Budget and Sustainability

The extent to which—

(1) The applicant's budget, including the budget narrative and tables—

(a) Identifies all funds that will support the project (e.g., Race to the Top—District grant; external foundation support; LEA, State, and other Federal funds); and

(b) Is reasonable and sufficient to support the development and implementation of the applicant's proposal; and

(c) Clearly provides a thoughtful rationale for investments and priorities, including—

(i) A description of *all* of the funds (e.g., Race to the Top—District grant; external foundation support; LEA, State, and other Federal funds) that the applicant will use to support the implementation of the proposal, including total revenue from these sources; and

(ii) Identification of the funds that will be used for one-time investments versus those that will be used for ongoing operational costs that will be incurred during and after the grant period, as described in the proposed budget and budget narrative, with a focus on strategies that will ensure the long-term sustainability of the personalized learning environments; and

(2) The applicant has a high-quality plan for sustainability of the project's goals after the term of the grant. The plan should include support from State and local government leaders and financial support. Such a plan may include a budget for the three years after the term of the grant that includes budget assumptions, potential sources, and uses of funds.

G. Optional Budget Supplement

An eligible applicant may apply for additional funding (beyond the applicable maximum level provided) up to a maximum of $2 million for each optional budget supplement to address a specific area that is supplemental to the plan for addressing Absolute Priority 1. The request for additional funding must be designed as a separate project that, if not funded, will not adversely affect the applicant's ability to implement its proposal and meet Absolute Priority 1.

Applications for this funding will be judged on the extent to which the applicant has a clear, discrete, and innovative solution that can be replicated in schools across the Nation. In determining the extent to which the request for an optional budget supplement meets this standard, the Department will consider—

(1) The rationale for the specific area or population that the applicant will address (e.g., strategies to assess hard to measure skills and traits such as perseverance, critical thinking, and communication; strategies for increasing diversity across schools and LEAs and within schools and classrooms; data systems; predictive algorithms; content-tagging schemes; new curriculum and online supports for students re-entering school from the juvenile justice system; or a credit recovery program design to support English learners newly entering into secondary school and the quality and feasibility of the proposal for addressing that area);

(2) A high-quality plan for how the applicant would carry out activities that would be co-developed and implemented across two or more LEAs (either participating in the full Race to the Top—District application, or not participating in the full Race to the Top—District application); and

(3) The proposed budget (up to $2 million) for each budget supplement, and the extent to which the proposed budget will be adequate to support the development and implementation of activities that meet the requirements of this notice, including the reasonableness of the costs in relation to the objectives, design, and significance of the proposed project activities and the number of students to be served.

NOTE, an optional budget supplement may include a proposal to utilize, across two or more districts, robust measures of student status and growth that assess hard to measure skills and traits such as goal-setting, teamwork, perseverance, critical thinking, communication,

creativity, and problem-solving across multiple academic domains and enable evaluation of group and individual learning experiences. The Department believes that utilizing these measures will contribute to the continuous improvement of personalized learning experiences and the tools and resources that support their implementation.

Peer reviewers will use the scoring rubric that can be found in Appendix A of this notice when scoring the selection criteria.

2. *Review and Selection Process:* In selecting grantees, the Secretary may consider high-ranking applications meeting Absolute Priorities 2 through 5 separately to ensure that there is a diversity of winning LEA applications from within States that have and have not previously received awards under Race to the Top, and from both non-rural and rural LEAs (as defined in this notice).

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We also may notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* Each grantee receiving Race to the Top—District funds must submit to the Department an annual report that must include a description of its progress to date on its goals, timelines, activities, deliverables, and budgets, and a comparison of actual performance to the annual targets the grantee established in its application for each performance measure. Further, a grantee receiving funds under this program is accountable for meeting the goals, timelines, activities, deliverables, budget, and annual targets established in the application; adhering to an annual fund drawdown schedule that is tied to meeting these goals, timelines, activities, deliverables, budget, and annual targets; and fulfilling and maintaining all other conditions for the conduct of the project. The Department will monitor a grantee's progress in meeting its goals, timelines, activities, deliverables, budget, and annual targets and in fulfilling other applicable requirements. In addition, the Department may collect additional data as part of a grantee's annual reporting requirements.

To support a collaborative process between the grantee and the Department, the Department may require that applicants that are selected to receive an award enter into a written performance agreement or cooperative agreement with, or complete a scope of work to be approved by, the Department. If the Department determines that a grantee is not meeting its goals, timelines, activities, deliverables, budget, or annual targets or is not fulfilling other applicable requirements, the Department will take appropriate action, which could include a collaborative process between the Department and the grantee, or enforcement measures with respect to this grant, such as placing the grantee in high-risk status, putting it on reimbursement payment status, or delaying or withholding funds.

An LEA that receives a Race to the Top—District grant must also meet the reporting requirements for the Federal Funding Accountability and Transparency Act (FFATA) for subaward and executive compensation data. Grantees, referred to as ''prime awardees,'' must report using the FFATA Subaward Reporting System (FSRS), and must, therefore, register in FSRS. More specific information regarding the FFATA reporting requirements will be provided after the grants are awarded.

4. *Continuation Awards:* The Department may provide full funding for the entire project period to successful applicants from the FY 2012 funds currently available or may provide funding for an initial budget period from the FY 2012 funds. Depending upon the amount of funding provided in the initial awards and the availability of funds, the Department may make continuation awards for subsequent fiscal years in accordance with 34 CFR 75.253. In making such continuation awards, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Meredith Farace, U.S. Department of Education, 400 Maryland Avenue SW., room 7e280, Washington, DC 20202. Telephone: (202) 453–6800 or by email: *racetothetop.district@ed.gov*.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal**

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

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

Dated: August 10, 2012.

Arne Duncan,

Secretary of Education.

BILLING CODE 4000–01–P

I. SCORING OVERVIEW AND CHART
(Appendix A in the Notice Inviting Applications)

I. Introduction

To help ensure inter-reviewer reliability and transparency for Race to the Top – District applications, the U.S. Department of Education has created a detailed scoring chart for scoring applications. The chart details the allocation of point values that reviewers will be using. Race to the Top – District grants will be awarded on a competitive basis to LEAs or consortia of LEAs. The chart will be used by reviewers to ensure consistency across and within review panels.

Reviewers will be assessing multiple aspects of applicants' Race to the Top – District applications. It is possible that an applicant that fails to earn points or earns a low number of points on one criterion might still win a Race to the Top – District award by earning high points on other criteria.

Reviewers will be required to make many thoughtful judgments about the quality of the applications. For example, reviewers will be assessing, based on the criteria, the comprehensiveness and feasibility of the plans. Reviewers will be asked to evaluate, if applicants have set ambitious yet achievable performance measures and annual targets in their applications. Reviewers will need to make informed judgments about applicants' goals, performance measures, annual targets, proposed activities and the rationale for those activities, the timeline, the deliverables, and credibility of applicants' plans.

Applicants must address Absolute Priority 1 throughout their applications, and Absolute Priority 1 must be met in order for an Applicant to receive funding. Additionally, an applicant must designate which of Absolute Priorities 2 through 5 it meets. Applications may choose to address the competitive preference priority in Part X of the application and may earn extra points under that priority. Applicants may also choose to submit one or more optional budget supplements, which will be scored separately from the rest of the application.

This appendix includes the point values for each criterion and for the competitive preference priority, guidance on scoring, and the scoring chart that the Department will provide to reviewers.

II. Points Overview

The scoring chart below shows the maximum number of points that may be assigned to each criterion and to the competitive preference priority.

	Detailed Points	Section Points	Section %
Selection Criteria:			
A. Vision:		40	19%
(A)(1) Articulating a comprehensive and coherent reform vision	10		
(A)(2) Applicant's approach to implementation	10		
(A)(3) LEA-wide reform & change	10		
(A)(4) LEA-wide goals for improved student outcomes	10		
B. Prior Record of Success and Conditions for Reform		45	21%
(B)(1) Demonstrating a clear track record of success	15		
(B)(2) Increasing transparency in LEA processes, practices, & investments	5		
(B)(3) State context for implementation	10		
(B)(4) Stakeholder engagement and support	10		
(B)(5) Analysis of needs and gaps	5		
C. Preparing Students for College and Careers		40	19%
(C)(1) Learning	20		
(C)(2) Teaching and Leading	20		
D. LEA Policy and Infrastructure		25	12%
(D)(1) LEA practices, policies, rules	15		
(D)(2) LEA and school infrastructure	10		
E. Continuous Improvement		30	14%
(E)(1) Continuous improvement process	15		
(E)(2) Ongoing communication and engagement	5		
(E)(3) Performance measures	5		
(E)(4) Evaluating effectiveness of investments	5		
F. Budget and Sustainability		20	10%
(F)(1) Budget for the project	10		
(F)(2) Sustainability of project goals	10		
G. Optional Budget Supplement	Scored Separately - 15 points		
Competitive Preference Priority	10	10	5%
	210	*210*	*100%*

III. About Scoring

The Department will give reviewers general guidance on how to evaluate and score the information that each applicant submits; this guidance will be consistent with the requirements, priorities, selection criteria, and definitions in the NIA. Reviewers will allot points based on the extent to which the applicant meets the criteria and the competitive preference priority, including existing track record and conditions as well as future plans. For plans, reviewers will allot points based on the quality of the applicant's plan and, where specified in the text of the criterion or competitive preference priority, whether the applicant has set ambitious yet achievable goals, performance measures, and annual targets. In making these judgments, reviewers will consider the extent to which the applicant has:

- A high-quality plan. In determining the quality of an applicant's plan, reviewers will evaluate the key goals, the activities to be undertaken and rationale for the activities, the timeline, the deliverables, the parties responsible for implementing the activities, and the overall credibility of the plan (as judged, in part, by the information submitted as supporting evidence). Applicants should submit this information for each criterion that the applicant addresses that includes a plan. Applicants may also submit additional information that they believe will be helpful to peer reviewers.

- Ambitious yet achievable goals, performance measures, and annual targets. In determining whether an applicant has ambitious yet achievable goals, performance measures, and annual targets, reviewers will examine the applicant's goals, measures, and annual targets in the context of the applicant's proposal and the evidence submitted (if any) in support of the proposal. There are no specific goals, performance measures, or annual targets that reviewers will be looking for here; nor will higher ones necessarily be rewarded above lower ones. Rather, reviewers will reward applicants for developing "ambitious yet achievable" goals, performance measures, and annual targets that are meaningful for the applicant's proposal and for assessing implementation progress, successes, and challenges.

Note that the evidence that applicants submit may be relevant both to judging whether the applicant has a high-quality plan and whether its goals, performance measures, and annual targets are ambitious yet achievable.

About Assigning Points: For each criterion, reviewers will assign points to an application. The Department has specified maximum point values at the criterion level.

The reviewers will use the general ranges below as a guide when awarding points.

Maximum Point Value	Quality of Applicant's Response		
	Low	Medium	High
20	0-4	5-14	15-20
15	0-3	4-11	12-15
10	0-2	3-7	8-10
5	0-1	2-3	4-5

About Priorities: There are two types of priorities in the Race to the Top – District competition.

- Absolute Priorities
  - Absolute Priority 1 cuts across the entire application and should not be addressed separately. It will be assessed, after the proposal has been fully reviewed and evaluated, to ensure that the application has met the priority. If an application has not met the priority, it will be eliminated from the competition. In those cases where there is a disparity in the reviewers' determinations on the priority, the Department will consider Absolute Priority 1 met only if a majority of the reviewers on a panel determine that an application meets the priority.
  - Absolute Priorities 2-5 are not judged by peer reviewers. Applicants indicate in the Application Assurances in Parts V or VI of the application which one of Absolute Priorities 2-5 applies to them. The Department will review Application Assurances before making grant awards.
- Competitive Preference Priority
  - The competitive preference priority is optional and applicants may respond to it in Section X of the application. It is worth up to 10 points, and reviewers will allot points based on the extent to which the applicant meets the priority.

In the Event of a Tie: If two or more applications have the same score and there is not sufficient funding to support all of the tied applicants in the funding range, the applicants' scores on criterion (B)(1) will be used to break the tie.

About the Optional Budget Supplement: The optional budget supplement is scored separately from the rest of the application and, funds permitting, the Secretary may award additional funds to grantees that submit one or more optional budget supplements of sufficient quality. Reviewers will score each optional budget supplement an applicant submits, and each optional budget supplement may receive up to 15 points. Optional budget supplement points are not included in an applicant's total score, and do not affect whether an applicant is awarded a Race to the Top – District grant. Optional budget supplements will be peer reviewed and scored; scores will be rank ordered; and applicants that receive a Race to the Top – District grant may be awarded additional funds for one or more of the optional budget supplements they choose to submit.

In the Event of a Tie for the Optional Budget Supplement: If two or more applications have the same score and there is not sufficient funding to support all of the tied applicants, the applicants' overall score will be used to break the tie.

MEMORANDUM OF UNDERSTANDING FOR CONSORTIA APPLICANTS

Background:

LEAs that apply to the Race to the Top – District competition as members of a consortium are required to enter into a memorandum of understanding (MOU) or other binding agreements with each other.

To support consortia in working together effectively, the U.S. Department of Education has produced a model MOU, which is attached. This model MOU may serve as a template for eligible LEAs that are considering entering into a consortium for the purpose of applying for a Race to the Top – District grant; however, consortia are not required to use it. They may use a different document that includes the key features noted below and in the model, and they should consult with their attorneys on what is most appropriate for their consortia.

The purpose of the model MOU is to help to specify a relationship that is specific to the Race to the Top – District competition. It is not meant to detail all typical aspects of consortia grant management or administration. At a minimum, each MOU must include the following key elements, each of which is described in detail below: (i) terms and conditions, (ii) consortium governance structure, and (iii) signatures.

(i) Terms and conditions: Each member of a consortium should sign a standard set of terms and conditions that includes, at a minimum, key roles and responsibilities of the applicant for the consortium (lead LEA) and member LEAs and assurances that make clear what the applicant and member LEAs are agreeing to do. In accordance with the requirements for consortia applicants in the Race to the Top – District notice inviting applications and the requirements for group applicants under 34 C.F.R. 75.127-129, the MOU must:

- Designate one member of the group to apply for the grant or establish a separate legal entity to apply for the grant;
- Detail the activities that each member of the consortium plans to perform;
- Bind each member of the consortium to every statement and assurance made by the Applicant in the application;
- State that the applicant for the consortium (the lead LEA) is legally responsible for:
    - The use of all grant funds;
    - Ensuring that the project is carried out by the consortium in accordance with Federal requirements;
    - Ensuring that the indirect cost funds are determined as required under 34 C.F.R. 75.564(e);
    - Carrying out the activities it has agreed to perform; and

    - Using the funds that it receives under the MOU in accordance with the Federal requirements that apply to the Race to the Top – District grant;
- State that each member of the consortium is legally responsible for:
    - Carrying out the activities it has agreed to perform; and
    - Using the funds that it receives under the MOU in accordance with the Federal requirements that apply to the Race to the Top – District grant; and
- Contain an assurance that each LEA:
    - At a minimum, will implement no later than the 2014-15 school year—
        - a teacher evaluation system (as defined in this notice)[2];
        - a principal evaluation system (as defined in this notice); and
        - a superintendent evaluation (as defined in this notice);
    - Is committed to preparing students for college or career, as demonstrated by:
        - Being located in a State that has adopted college- and career- ready standards (as defined in this notice); or
        - Measuring all student progress and performance against college- and career- ready graduation requirements (as defined in this notice);
    - Has a robust data system that has, at a minimum,--
        - An individual teacher identifier with a teacher-student match; and
        - The capability to provide timely data back to educators and their supervisors on student growth;
    - Has the capability to receive or match student-level preschool-through-grade-12 and higher education data; and
    - Ensures that any disclosure of or access to personally identifiable information in students' education records complies with the Family Educational Rights and Privacy Act (FERPA).

(ii) Consortium Governance Structure: As stated in the notice, at a minimum, the governance structure must describe the consortium's structure for carrying out its operations, including:

- The organizational structure of the consortium and the differentiated roles that a member LEA may hold (e.g., lead LEA, member LEA);
- For each differentiated role, the associated rights and responsibilities (including rights and responsibilities for adopting and implementing the consortium's proposal for a grant);
- The consortium's method and process (e.g., consensus, majority) for making different types of decisions (e.g., policy, operational);

[2] The term "as defined in this notice" is used throughout this Appendix and model memorandum of understanding. "This notice" refers to the Notice Inviting Applications (NIA) for the Race to the Top—District competition.

- The protocols by which the consortium will operate, including the protocols for member LEAs to change roles or leave the consortium;
- The consortium's plan for managing funds received under this grant;
- The terms and conditions of the memorandum of understanding or other binding agreement executed by each member LEA; and
- The consortium's procurement process, and evidence of each member LEA's commitment to that process.

(iii) Signatures: As stated in the notice, each MOU must be signed by the LEA's superintendent or CEO, local school board president, and local teacher union or association president (where applicable).

II. MODEL MEMORANDUM OF UNDERSTANDING
For
Race to the Top - District Grant

[CONSORTIUM NAME]

I. Parties

This Memorandum of Understanding ("MOU") is made and effective as of this [DAY] day of [MONTH, YEAR], by and between the [LEA] and all other member LEAs of [CONSORTIUM ("Consortium")] that have also executed this MOU.

[LEA] has elected to participate in [CONSORTIUM] as (check one):

_____ Lead LEA

_____ Member LEA

II. Scope of MOU

This MOU constitutes an understanding between the Consortium member LEAs to participate in the Consortium. This document describes the purpose and goals of the Consortium, explains its organizational and governance structure, and defines the terms and responsibilities of participation in the Consortium.

III. Binding Commitments and Assurances

To support these goals, each signatory LEA that signs this MOU assures, certifies, and represents that the signatory LEA:

a. Has all requisite power and authority to execute this MOU;
b. Is familiar with all the contents of the Consortium application;
c. At a minimum, will implement no later than the 2014-15 school year—

i. a teacher evaluation system (as defined in this notice)[3];
ii. a principal evaluation system (as defined in this notice); and
iii. a superintendent evaluation (as defined in this notice);

d. Is committed to preparing students for college or career, as demonstrated by:
   i. Being located in a State that has adopted college- and career- ready standards (as defined in this notice); or
   ii. Measuring all student progress and performance against college- and career- ready graduation requirements (as defined in this notice);

e. Has a robust data system that has, at a minimum,--
   i. An individual teacher identifier with a teacher-student match; and
   ii. The capability to provide timely data back to educators and their supervisors on student growth;

f. Has the capability to receive or match student-level preschool-through-grade-12 and higher education data;

g. Ensures that any disclosure of or access to personally identifiable information in students' education records complies with the Family Educational Rights and Privacy Act (FERPA);

h. Will comply with all of the terms of the Grant, and all applicable Federal, State, and local laws and regulations, including laws and regulations applicable to the Program, and the applicable provisions of EDGAR (34 CFR Parts 75, 77, 79, 80, 82, 84, 86, 97, 98 and 99) and 2 CFR part 3485;

i. Meets all the eligibility requirements described in the application and notice;

j. Will bind itself to and comply with all elements of the Consortium governance structure described in this MOU and the individual LEA's role in the structure as described in this MOU; and

k. Will bind itself to every statement and assurance made in the Consortium's application, including but not limited to programs, plans, policies, strategies, and requirements that the Consortium plans to implement.

IV. Consortium Membership

a. Each member LEA and the lead LEA will sign on to only one application for a Race to the Top – District grant.

b. Each LEA in the Consortium is legally responsible for:
   1. Carrying out the activities it has agreed to perform; and
   2. Using the funds that it receives under the MOU in accordance with the Federal requirements that apply to the Race to the Top – District grant.

c. Each LEA in the Consortium will support the activities of the Consortium as follows:
   1. Participate in all activities and projects that the Consortium board approves in support of the Consortium's application;
   2. Participate in the management of all those activities and projects;
   3. [Other activities as necessary]

[3] The term "as defined in this notice" is used throughout the model memorandum of understanding. "This notice" refers to the Notice Inviting Applications (NIA) for the Race to the Top—District competition.

d. [If applicable, the MOU should also describe the unique activities and roles that each LEA will perform for the Consortium.]

V. Lead LEA

a. The lead LEA will serve as the "Applicant" LEA for purposes of the grant application, applying as the member of the Consortium on behalf of the Consortium, pursuant to the Application Requirements of the Notice and 34 C.F.R. 75.127-129.
b. The lead LEA is legally responsible for:
    i. The use of all grant funds;
    ii. Ensuring that the project is carried out by the Consortium in accordance with Federal requirements; and
    iii. Ensuring that the indirect cost funds are determined as required under 34 C.F.R. 75.564(e).
c. The lead LEA or another LEA participating in the consortium will act as the fiscal agent on behalf of the Consortium.
d. The LEA acting as fiscal agent will comply with [STATE's] statutes regarding procurement, accounting practices, and all other relevant areas of law, including but not limited to [CITATIONS].

VI. Consortium Governance: [In this section the Consortium should describe its governance structure. As stated in the notice, at a minimum, the governance structure must describe the Consortium's structure for carrying out its operations, including:

a. The organizational structure of the Consortium and the differentiated roles that a member LEA may hold (e.g., lead LEA, member LEA);
b. For each differentiated role, the associated rights and responsibilities (including rights and responsibilities related for adopting and implementing the Consortium's proposal for a grant);
c. The Consortium's method and process (e.g., consensus, majority) for making different types of decisions (e.g., policy, operational);
d. The protocols by which the Consortium will operate, including the protocols for member LEAs to change roles or leave the Consortium;
e. The Consortium's plan for managing funds received under this grant;
f. The terms and conditions of the MOU or other binding agreements executed by each member LEA; and
g. The Consortium's procurement process, and evidence of each member LEA's commitment to that process.]

VII. Modification

This MOU may be amended only by written agreement signed by each of the parties involved, and in consultation with the U.S. Department of Education.

[A Consortium may find it necessary to include other terms and conditions in its MOU, such as provisions explaining governing law, liability and risk of loss, and resolution of conflicts.]

VIII. Duration/Termination

This MOU shall be effective, beginning with the date of the last signature hereon, and if the grant is received, ending upon the expiration of the grant project period, or upon mutual agreement of the parties, whichever occurs first.

IX. Points of Contact

Communications with the LEA regarding this MOU should be directed to:

Name: [NAME]

Mailing Address: [ADDRESS]

Telephone: [(###) ###-####]

Fax: [(###) ###-####]

E-mail: [EMAIL@EMAIL]

Or hereinafter to another individual that may be designated by the LEA in writing transmitted to the [appropriate party of the Consortium].

X. Signatures

[LEA] hereby joins the Consortium as a lead / member (circle one), and agrees to be bound by all the assurances and commitments associated with lead / member (circle one) classification. Further, the LEA agrees to perform the duties and carry out the responsibilities associated with the lead / member (circle one) membership classification as described in this MOU.

Superintendent or CEO of the LEA (Printed Name):	Telephone:
Signature of Superintendent or CEO of the LEA:	Date:
Local School Board President (Printed Name):	Telephone:
Signature of Local School Board President:	Date:
President of the Local Teacher's Union or Association, if applicable (Printed Name):	Telephone:
Signature of the President of the Local Teacher's Union or Association:	Date:

[FR Doc. 2012–20037 Filed 8–15–12; 8:45 am]
BILLING CODE 4000–01–C

FEDERAL REGISTER

Vol. 77 Thursday,

No. 159 August 16, 2012

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2012–13 Season; 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 Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2012–13 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter, Service or we) proposes 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.

DATES: We will accept all comments on the proposed regulations that are postmarked or received in our office by August 27, 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).

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.

SUPPLEMENTARY INFORMATION: In the April 17, 2012, **Federal Register** (77 FR 23094), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2012–13 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 30 Indian Tribes, based on the input we received in response to the April 17, 2012, proposed rule, and our previous rules. As described in that proposed rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian Tribes in response to tribal requests for recognition of their reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both tribal and nontribal hunters on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal hunters, with hunting by nontribal hunters 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 the 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, the regulations established under the guidelines must be consistent with the 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 (Treaty). The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal hunters 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 hunters on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service 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 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 wish to establish special hunting regulations for tribal members on ceded lands. Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification.

We routinely provide copies of **Federal Register** publications pertaining to migratory bird management to all State Directors, Tribes, and other interested parties. It is the responsibility of the States, Tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource. Before developing the guidelines, we reviewed available information on the current status of migratory bird populations, reviewed the current status of migratory bird hunting on Federal Indian reservations, and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal hunters on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include:

(a) Harvest anticipated under the requested regulations;

(b) Methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest

would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

We may modify regulations or establish experimental special hunts, after evaluation and confirmation of harvest information obtained by the Tribes.

We believe the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and, therefore, we made them final beginning with the 1988–89 hunting season (53 FR 31612, August 18, 1988). We should stress here, however, that use of the guidelines is not mandatory and no action is required if a Tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 19–20, 2012, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2012–13 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl.

Participants at the previously announced July 25–26, 2012, meetings will review information on the current status of waterfowl and develop recommendations for the 2012–13 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit comments on the matters discussed.

Population Status and Harvest

Preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds was excerpted from various reports and provided in the July 20, 2012, **Federal Register** (77 FR 42920). For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT**, from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html,* or from *http://www.regulations.gov*.

Hunting Season Proposals From Indian Tribes and Organizations

For the 2012–13 hunting season, we received requests from 24 Tribes and Indian organizations. In this proposed rule, we respond to these requests and also evaluate anticipated requests for six Tribes from whom we usually hear but from whom we have not yet received proposals. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage Tribes to work with us to develop agreements for management of migratory bird resources on tribal lands.

It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a late-August 2012 **Federal Register** that will include tribal regulations for the early-hunting season. Early seasons generally begin around September 1 each year and most commonly include such species as American woodcock, sandhill cranes, mourning doves, and white-winged doves. Late seasons generally begin on or around September 24 and most commonly include waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian Tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as the same as permitted in Pacific Flyway States under final Federal frameworks, and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 20, 2012 (77 FR 42920); early-season final frameworks will be published in late August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected Tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by Tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 30 Tribes that meet the established criteria are shown below.

(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The Tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 2012–13 proposal, the Colorado River Indian Tribes requested split dove seasons. They propose that their early season begin September 1 and end September 15, 2012. Daily bag limits would be 10 mourning or white-winged doves in the aggregate. The late season for doves is proposed to open November 10, 2012, and close December 24, 2012. The daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit after the first day of the season. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The Tribes also propose duck hunting seasons. The season would open October 6, 2012, and run until January 20, 2013. The Tribes propose the same season dates for mergansers, coots, and common moorhens. The daily bag limit for ducks, including mergansers, would be seven, except that the daily bag limits could contain no more than two hen mallards, two redheads, two Mexican ducks, two goldeneye, three scaup, one pintail, two cinnamon teal, and one canvasback. The possession limit would be twice the daily bag limit after the first day of the season. The daily bag and possession limit for coots and common moorhens would be 25, singly or in the aggregate.

For geese, the Colorado River Indian Tribes propose a season of October 13, 2012, through January 20, 2013. The daily bag limit for geese would be three light geese and three dark geese. The possession limit would be six light geese and six dark geese after opening day.

In 1996, the Tribes conducted a detailed assessment of dove hunting.

Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and based upon past seasons, we and the Tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit and a Federal Migratory Bird Stamp in their possession while hunting. Other special tribally set regulations would apply. As in the past, the regulations would apply both to tribal and nontribal hunters, and nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2012–13 hunting season, given the seasons' dates fall within final flyway frameworks (applies to nontribal hunters only).

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal and Nontribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation.

As in the past, tribal regulations for nontribal hunters would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot or other federally approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

For tribal members, the Tribe proposes outside frameworks for ducks and geese of September 1, 2012, through March 9, 2013. Daily bag and possession limits were not proposed for tribal members.

The requested season dates and bag limits are similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by nontribal hunters.

We propose to approve the Tribes' request for special migratory bird regulations for the 2012–13 hunting season.

(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 26, 2012, proposal covers land set apart for the band under the Treaties of 1837 and 1854 in northeastern and east-central Minnesota and the Band's Reservation near Duluth.

The band's proposal for 2012–13 is essentially the same as that approved last year except for an expansion of the sandhill crane season to include both the 1854 and 1837 ceded territories only and not reservation lands. The proposed 2012–13 waterfowl hunting season regulations for Fond du Lac are as follows:

Ducks:

A. 1854 and 1837 Ceded Territories:

Season Dates: Begin September 15 and end November 25, 2012.

Daily Bag Limit: 18 ducks, including no more than 12 mallards (only 3 of which may be hens), 9 black ducks, 9 scaup, 9 wood ducks, 9 redheads, 9 pintails, and 9 canvasbacks.

B. Reservation:

Season Dates: Begin September 1 and end November 25, 2012.

Daily Bag Limit: 12 ducks, including no more than 8 mallards (only 2 of which may be hens), 6 black ducks, 6 scaup, 6 redheads, 6 pintails, 6 wood ducks, and 6 canvasbacks.

Mergansers:

A. 1854 and 1837 Ceded Territories:

Season Dates: Begin September 15 and end November 25, 2012.

Daily Bag Limit: 15 mergansers, including no more than 6 hooded mergansers.

B. Reservation:

Season Dates: Begin September 1 and end November 25, 2012.

Daily Bag Limit: 10 mergansers, including no more than 4 hooded mergansers.

Canada Geese: All Areas:

Season Dates: Begin September 1 and end November 25, 2012.

Daily Bag Limit: 20 geese.

Sandhill Cranes: 1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 25, 2012.

Daily Bag Limit: Two sandhill cranes. A crane carcass tag is required prior to hunting.

Coots and Common Moorhens (Common Gallinules):

A. 1854 and 1837 Ceded Territories:

Season Dates: Begin September 15 and end November 25, 2012.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

B. Reservation:

Season Dates: Begin September 1 and end November 25, 2012.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: All Areas:

Season Dates: Begin September 1 and end November 25, 2012.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: All Areas:

Season Dates: Begin September 1 and end November 25, 2012.

Daily Bag Limit: Eight common snipe.

Woodcock: All Areas:

Season Dates: Begin September 1 and end November 25, 2012.

Daily Bag Limit: Three woodcock.

Mourning Dove: All Areas

Season Dates: Begin September 1 and end October 30, 2012.

Daily Bag Limit: 30 mourning doves.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

3. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

4. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. There are no possession limits for migratory birds except for cranes in the Ceded Territories, unless otherwise noted above. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-

reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The band anticipates harvest will be fewer than 500 ducks and geese, and less than 12 sandhill cranes.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewa Indians.

(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized Tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2012–13 season, the Tribe requests that the tribal member duck season run from September 15, 2012, through January 15, 2013. A daily bag limit of 20 would include no more than 5 pintail, 3 canvasback, 1 hooded merganser, 5 black ducks, 5 wood ducks, 3 redheads, and 9 mallards (only 4 of which may be hens).

For Canada and snow geese, the Tribe proposes a September 1 through November 30, 2012, and a January 1 through February 8, 2013, season. For white-fronted geese and brant, the Tribe proposes a September 20 through November 30, 2012, season. The daily bag limit for Canada and snow geese would be 10, and the daily bag limit for white-fronted geese and including brant would be 5 birds. We further note that, based on available data (of major goose migration routes), it is unlikely that any Canada geese from the Southern James Bay Population will be harvested by the Tribe.

For woodcock, the Tribe proposes a September 1 through November 14, 2012, season. The daily bag limit will not exceed five birds. For mourning doves, snipe, and rails, the Tribe proposes a September 1 through November 14, 2012, season. The daily bag limit would be 10 per species.

For sandhill cranes, the Tribe proposes a new season of September 1 through November 30, 2012. The daily bag limit will not exceed one bird daily. All cranes in this proposed hunt area are Eastern Population (EP) sandhill cranes (see Sandhill Crane Season under (e) Great Lakes Indian Fish and Wildlife Commission for further discussion).

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2011–12 hunting season indicated that approximately 29 tribal hunters harvested an estimated 140 ducks and 45 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians requested 2012–13 special migratory bird hunting regulations, including the establishment of a new sandhill crane season. However, given the need to closely monitor the harvest of this species, we request that Grand Traverse implement either a special crane harvest tag or crane harvest reporting system/survey to track crane harvest, similar to that implemented by Fond du Lac last year.

(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission. (GLIFWC is an intertribal agency exercising delegated natural resource management and regulatory authority from its member Tribes in portions of Wisconsin, Michigan, and Minnesota). Beginning in 1986, a Tribal season on ceded lands in the western portion of the Michigan Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources. We have approved regulations for Tribal members in both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, GLIFWC requested, and we approved, regulations to permit Tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin originally concurred with the regulations, although both Wisconsin and Michigan have raised various concerns over the years. Minnesota did not concur with the original regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. In 1999, the U.S. Supreme Court upheld the existence of the tribes' treaty reserved rights in *Minnesota* v. *Mille Lacs Band,* 199 S.Ct. 1187 (1999).

We acknowledge all of the States' concerns, but point out that the U.S. Government has recognized the Indian treaty reserved rights, and that acceptable hunting regulations have been successfully implemented in Minnesota, Michigan, and Wisconsin. Consequently, in view of the above, we have approved regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of treaty reserved rights for band members to hunt and fish was pivotal in our decision to approve a 1991–92 season for the 1836 ceded area in Michigan. Since then, in the 2007 Consent Decree the 1836 Treaty Tribes' and Michigan Department of Natural Resources and Environment established court-approved regulations pertaining to off-reservation hunting rights for migratory birds.

For 2012, the GLIFWC proposed off-reservation special migratory bird hunting regulations on behalf of the member Tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas in Wisconsin and Michigan), the Mille Lacs Band of Ojibwe and the six Wisconsin Bands (for the 1837 Treaty area in Minnesota), and the Bay Mills Indian Community (for the 1836 Treaty area in Michigan). Member Tribes of the Task Force are: the Bad River Band of the Lake Superior Tribe of Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), all in Wisconsin; the Mille Lacs Band of Chippewa Indians, and the Fond du Lac Band of Lake Superior Chippewa Indians in Minnesota; the Lac Vieux Desert Band of Chippewa Indians, and the Keweenaw Bay Indian Community in Michigan.

The GLIFWC 2012 proposal has several significant changes from regulations approved last season. In the 1837 and 1842 Treaty Areas, the GLIFWC proposal would allow the use of electronic calls throughout the season; would extend shooting hours by 30 minutes in both the morning and the evening to 1 hour before sunrise and 1 hour after sunset; would increase the daily bag limits to 50 ducks and remove all species restrictions within the daily bag limit for ducks; would allow the

first harvest of sandhill cranes and tundra swans; would open the season (other than for geese) on September 4; and would remove restrictions for decoy use in Wisconsin. In the 1836 Treaty Area, the GLIFWC proposal would remove all species restrictions within the daily bag limit for ducks.

GLIFWC states that the proposed regulatory changes are intended to provide tribal members a harvest opportunity within the scope of rights reserved in their various treaties and increase tribal subsistence harvest opportunities, while protecting migratory bird populations. Under the GLIFWC proposed regulations, GLIFWC expects total ceded territory harvest to be approximately 1,575 ducks, 300 geese, 50 sandhill cranes, and 50 tundra swans, which is roughly similar to anticipated levels in previous years for those species for which seasons were established. GLIWFC further anticipates that tribal harvest will remain low given the small number of tribal hunters and the limited opportunity to harvest more than a small number of birds on most hunting trips.

Recent GLIFWC harvest surveys (1996–98, 2001, 2004, and 2007–08) indicate that tribal off-reservation waterfowl harvest has averaged less than 1,050 ducks and 200 geese annually. In the latest survey year for which we have specific results (2004), an estimated 53 hunters took an estimated 421 trips and harvested 645 ducks (1.5 ducks per trip) and 84 geese (0.2 geese per trip). Analysis of hunter survey data over 1996–2004 indicates a general downward trend in both harvest and hunter participation.

While we acknowledge that tribal harvest and participation has declined in recent years, we do not believe that the GLIFWC's proposal for tribal waterfowl seasons on ceded lands in Wisconsin, Michigan, and Minnesota for the 2012–13 season is in the best interest of the conservation of migratory birds. More specific discussion follows below.

Allowing Electronic Calls

As we stated last year (76 FR 54676, September 1, 2011), the issue of allowing electronic calls and other electronic devices for migratory game bird hunting has been highly debated and highly controversial over the last 40 years, similar to other prohibited hunting methods such as baiting. Electronic calls, i.e., the use or aid of recorded or electronic amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds to lure or attract migratory game birds to hunters, was Federally prohibited in 1957 because of its effectiveness in attracting and aiding the harvest of ducks and geese and is generally not considered a legitimate component of hunting. In 1999, after much debate, the migratory bird regulations were revised to allow the use of electronic calls for the take of light geese (lesser snow geese and Ross geese) during a light-goose-only season when all other waterfowl and crane hunting seasons, excluding falconry, were closed (64 FR 7507, February 16, 1999; 64 FR 71236, December 20, 1999; and 73 FR 65926, November 5, 2008). The regulations were subsequently changed also in 2006 to allow the use of electronic calls for the take of resident Canada geese during Canada-goose-only September seasons when all other waterfowl and crane seasons, excluding falconry, were closed (71 FR 45964, August 10, 2006). In both instances, these changes were made in order to significantly increase the harvest of these species due to either serious population overabundance, or depredation issues, or public health and safety issues, or both.

Available information from the use of additional hunting methods, such as electronic calls, during the special light-goose seasons indicate that total harvest increased approximately 50–69 percent. On specific days when light-goose special regulations were in effect, the mean light goose harvest increased 244 percent. One research study found that lesser snow goose flocks were 5.0 times more likely to fly within gun range (≤50 meters) in response to electronic calls than to traditional calls and the mean number of snow geese killed per hour per hunter averaged 9.1 times greater for electronic calls than for traditional calls. While these results are only directly applicable to light geese, we believe these results are applicable to most waterfowl species, and indicative of some likely adverse harvest impacts on other geese and ducks.

Removal of the electronic call prohibition would be inconsistent with our long-standing conservation concerns. Given available evidence on the effectiveness of electronic calls, and the large biological uncertainty surrounding any widespread use of electronic calls, we believe the potential for overharvest could contribute to long-term population declines. Further, migratory patterns could be affected and it is possible that hunter participation could increase beyond GLIFWC's estimates (50 percent) and could result in additional conservation impacts, particularly on locally breeding populations. Thus, we do not support allowing the use of electronic calls in the 1837 and 1842 Treaty Areas.

Additionally, given the fact that tribal waterfowl hunting covered by this proposal would occur on ceded lands that are not in the ownership of the Tribes, we believe the use of electronic calls to take waterfowl would lead to confusion on the part of the public, wildlife-management agencies, and law enforcement officials in implementing the requirements of 50 CFR part 20. Further, similar to the impacts of baiting, uncertainties concerning the zone of influence attributed to the use of electronic calls could potentially increase harvest from nontribal hunters operating within areas electronic calls are being used, thereby posing risks to the migratory patterns and distribution of migratory waterfowl.

Lastly, we remind GLIFWC that electronic calls are permitted for the take of resident Canada geese during Canada-goose-only September seasons when all other waterfowl and crane seasons are closed. In the case of GLIFWC's proposed seasons, electronic calls could be used September 1–14 for resident Canada geese (as long as GLIFWC's duck and crane season begins no earlier than September 15). This specific regulatory change was implemented in 2006 in order to significantly control resident Canada geese due to widespread population overabundance, depredation issues, and public health and safety issues.

Expanded Shooting Hours

Normally, shooting hours for migratory game birds are one-half hour before sunrise to sunset. A number of reasons and concerns have been cited for extending shooting hours past sunset. Potential impacts to some locally breeding populations (e.g., wood ducks), hunter safety, difficulty of identifying birds, retrieval of downed birds, and impacts on law enforcement are some of the normal concerns raised when discussing potential expansions of shooting hours. However, despite these concerns, in 2007, we supported the expansion of shooting hours by 15 minutes after sunset in the 1837, 1842, and 1836 Treaty Areas (72 FR 58452, October 15, 2007). We had previously supported this expansion in other tribal areas and have not been made aware of any wide-scale problems. Further, at that time, we believed that the continuation of a specific species restriction within the daily bag limit for mallards, and the implementation of a species restriction within the daily bag limit for wood ducks, would allay potential conservation concerns for these species. We supported the

increase with the understanding that we would need to closely monitor tribal harvest through either GLIFWC's own increased harvest surveys or GLIFWC's assisting the Service to survey tribal hunters.

Last year, in deference to tribal traditions and in the interest of cooperation, and in spite of our previously identified concerns regarding species identification, species conservation of locally breeding populations, retrieval of downed birds, hunter safety, and law enforcement impacts, we approved shooting 30 minutes after sunset (an extension of 15 minutes from the then-current 15 minutes after sunset) (76 FR 54676, September 1, 2011). This was consistent with other Tribes in the general area (Fond du Lac, Leech Lake, Oneida, Sault Ste Marie, and White Earth). Extending shooting hours on both the front end and the back end of the day to 1 hour before sunrise and 1 hour after sunset as GLIWFC has proposed would be contrary to public safety and only heightens our previously identified concerns. It is widely considered dark 45 minutes after sunset (and 45 minutes before sunrise), and we see no viable remedies to allay our concerns. Shooting this early or late would also significantly increase the potential take of non-game birds. Thus, we cannot support increasing the shooting hours by 30 minutes in the 1837 and 1842 Treaty Areas (to 60 minutes before sunrise and 60 minutes after sunset).

Increasing the Overall Daily Bag Limit for Ducks

Based on the proposed increased daily bag limits (from 30 to 50 ducks per day in the 1837 and 1842 Treaty Areas), GLIFWC is estimating a relatively small additional duck harvest (1,050 to 1,575 ducks). While it is possible that hunter participation and harvest could increase beyond their estimates (50 percent), we do not anticipate such an increase given their relatively small average daily harvest (2.2 ducks per day). Further, GLIFWC reports that the largest number of ducks reportedly harvested in a single day was 20. Thus, we do not anticipate any large-scale harvest shifts or significant biological conservation impacts with GLIFWC's proposal. However, we also note that GLIFWC's own dated harvest data indicates that present daily bag limits do not appear to be a hindrance or limiting factor for Tribal harvest, and increasing the daily bag limit to 50 ducks from the present 30-duck daily bag limit would be far in excess of anything we currently have experience with regarding tribal migratory bird hunting regulations. We further note that in 2007, in an effort to obtain the necessary information, we implemented a pilot expansion of the daily bag limit for ducks to 30 birds per day in the 1837 and 1842 Treaty Areas. We supported this with the understanding that we would need to closely monitor tribal harvest through either GLIFWC's own increased harvest surveys or GLIFWC's assisting the Service to survey tribal hunters. We have reiterated our request over the past several years for GLIFWC to continue their current harvest survey based on our implementation of this pilot bag limit increase for ducks in the 1837 and 1842 Treaty Areas in 2007, particularly for species such as mallards, the bag limits for which were subsequently significantly increased in 2008 (from 10 to 30 per day). To date, we have not been presented with any new data since the 2008 harvest survey results.

Remove Restrictions on Decoy Use in Wisconsin

In Wisconsin, State law requires that decoys may not be placed more than an hour before legal shooting hours or left out more than 20 minutes after legal shooting hours. As we stated last year concerning a similar decoy restriction in Michigan (76 FR 54676, September 1, 2011), while we believe that there may be safety concerns with elimination of such a restriction, we take no position on the relative need or lack of need for such a restriction. Other than regulations on National Wildlife Refuges and other Federal lands, there are no Federal restrictions requiring the removal of unattended decoys.

Additionally, given the fact that tribal waterfowl hunting covered by this proposal would occur on ceded lands that are not in the ownership of the Tribes, we believe the use of unattended decoys to ''reserve'' hunting areas in public waters (i.e., those lands in the ceded territories outside of lands directly controlled by the Tribes) could lead to confusion and frustration on the part of the public, hunters, wildlife-management agencies, and law enforcement officials due to the inherent difficulties of different sets of hunting regulations for different areas and groups of hunters. However, we view this issue as a Tribal–State issue, and the Service takes no position on it in this proposed rule.

Removal of Species Restrictions for Ducks

We have several concerns with GLIFWC's proposal to remove all species restrictions within the overall duck daily bag limits in the 1837 and 1842 Treaty Areas. We have a number of duck species that are either showing long-term downward population trends (pintails and black ducks), or other species for which an increased daily bag limit of 50 birds per day could potentially have conservation impacts (scaup, canvasbacks), particularly on locally-breeding ducks (mallards and wood ducks). Overharvest of these species in localized areas due to removal of species restrictions could contribute to long-term declines. However, while we believe the proposal to eliminate all species restrictions within the daily bag limit for ducks could potentially have resource conservation impacts on locally-breeding duck populations, and would prefer not to implement such a change at this time, we are willing to remove the restrictions for tribal harvest in the 1836, 1837, and 1842 ceded areas. As we stated last year regarding the removal of possession limits (76 FR 54676, September 1, 2011), we make this change with some trepidation. However, in the interest of our long-term relationship with GLIWFC, and the high importance GLIWFC has placed on this issue, we would agree with this important change. We note that, should resource conservation impacts be discovered, or should a particular species' population status warrant action, we would expect that the lack of species restrictions would be revisited and adjusted accordingly, especially if a particular species warranted a nationwide closed season (e.g., canvasbacks).

Earlier Duck Season Opening Date

The Migratory Bird Treaty allows the hunting of migratory game birds beginning September 1. Generally, we have tried to guide Tribes to select an opening date for duck hunting of no earlier than September 15. This guidance is based on our concern that hunting prior to September 15 significantly increases the potential for taking ducks that have not yet fully fledged (normally the result of late-nesting or renesting hens) or species misidentification due to the fact that some species and/or sexes are not yet readily distinguishable. While these impacts primarily concern locally-breeding ducks, the potential does exist for the take of molt migrants, i.e., birds that have specifically migrated to an area to complete the molting process. We would prefer that GLIFWC adhere to this guidance and would prefer not to implement such a change at this time. However, we see no significant conservation implications given the relatively small numbers of tribal hunters and are willing to allow

GLIFWC to begin the duck season on September 4 in the 1836, 1837, and 1842 ceded areas. We are proposing this change in the interest of our long-term relationship with GLIWFC and the understanding that if significant conservation impacts are discovered, we would adjust the duck season opening date accordingly.

Sandhill Crane Season

We have no objections to the establishment of a sandhill crane season in the 1837 and 1842 Treaty Areas. We note that at least one other Tribe currently has a sandhill crane season (see (c) Fond du Lac Band of Lake Superior Chippewa in Minnesota elsewhere in this proposed rule) and another has proposed establishing a new season this year (see (d) Grand Traverse Band of Ottawa and Chippewa in Michigan elsewhere in this proposed rule). All cranes in these current and proposed hunt areas are Eastern Population (EP) sandhill cranes. EP sandhill cranes rebounded from near extirpation in the late 1800s to over 30,000 cranes by 1996. As of last year, the current 3-year average population index for EP cranes was 51,217 cranes. As a result of this rebound and their continued range expansion, the Atlantic and Mississippi Flyway Councils developed a cooperative management plan for this population, and criteria were developed describing when hunting seasons could be opened. The State of Kentucky held its first hunting season on this population in 2011–12 and harvested 50 cranes. Further, allowance for Tribal harvest is specifically considered in the EP plan.

GLIFWC estimates that no more than 50 cranes will be harvested during the proposed season. We note that two cranes were harvested last year in the inaugural Fond du Lac sandhill crane season. We support the establishment of GLIFWC's new sandhill crane season. However, given the need to closely monitor the harvest of this species, we request that GLIFWC implement either a special crane harvest tag or crane harvest reporting system/survey to track crane harvest, similar to that implemented by Fond du Lac last year, and requested of Grand Traverse this year (see (d) Grand Traverse *Band of Ottawa and Chippewa Indians in Michigan elsewhere in this proposed rule).*

Tundra Swan Season

As we stated with sandhill cranes, we are not opposed to the establishment of a tundra swan season in Wisconsin. However, unlike the sandhill crane issue, the establishment of a new tundra swan season in the ceded territory areas in question involves several significant concerns and special considerations. We believe these concerns need further study and consideration before any implementation of a new tundra swan season in the ceded territories.

First, the proposed areas in question are also home to trumpeter swans. Many cooperators, including GLIFWC, worked together to reestablish a breeding trumpeter swan population in the Great Lakes. These efforts have been largely successful with the removal of this species from the Wisconsin endangered species list in 2009. After a 25-year recovery program, there are currently about 200 breeding pairs in Wisconsin. However, it is very difficult to distinguish between tundra and trumpeter swans unless swans vocalize in flight. We have significant concerns over the accidental harvest of trumpeter swans by tribal hunters hunting during a tundra swan season. Further, within Wisconsin, the northern ceded territory is an area of high trumpeter swan use containing over 80 percent of the breeding pairs. We believe such areas should be avoided either temporally or geographically to the extent possible. When a hunting season on tundra swans is ultimately implemented, we believe it would be best to focus hunting efforts on the primary tundra swan migration concentrations while avoiding areas of significant trumpeter swan numbers. Unfortunately, most such areas are located outside of the ceded territories of northern Wisconsin.

In addition to the concerns about potential impacts to trumpeter swans, we believe it is imperative that any tribal tundra swan hunting proposal follow the Eastern Population of tundra swans management plan including a quota permit system and harvest reporting. The EP tundra swan management plan was cooperatively developed by the Atlantic, Central, and Mississippi Flyway Councils in 2007 and guides the management and harvest of EP tundra swans.

For these reasons, we do not believe that a tribal tundra swan hunting season in the ceded territory should be implemented this year. Given that all these concerns can be worked through over the next year, we do not believe that implementation of a tundra swan season next season is unrealistic. We note that both the Service and the State wildlife agencies have considerable trumpeter swan information that would be helpful in conducting additional biological evaluation and harvest planning and are available to work with GLIFWC on these issues.

The proposed 2012–13 waterfowl hunting season regulations apply to all treaty areas (except where noted) for GLIFWC as follows:

Ducks:

Season Dates: Begin September 4 and end December 31, 2012.

Daily Bag Limit: 50 ducks in the 1937 and 1842 Treaty Area; 30 ducks in the 1836 Treaty Area.

Mergansers:

1836 Treaty Area Season Dates: Begin September 15 and end December 31, 2012.

1837 and 1842 Treaty Area Season Dates: Begin September 4 and end December 31, 2012.

Daily Bag Limit: 10 mergansers.

Geese:

Season Dates: Begin September 1 and end December 31, 2012. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting outside of these dates will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds:

A. Coots and Common Moorhens (Common Gallinules):

1836 Treaty Area Season Dates: Begin September 15 and end December 31, 2012.

1837 and 1842 Treaty Area Season Dates: Begin September 4 and end December 31, 2012.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails:

1836 Treaty Area Season Dates: Begin September 15 and end December 31, 2012.

1837 and 1842 Treaty Area Season Dates: Begin September 4 and end December 31, 2012.

Daily Bag and Possession Limits: 20, singly, or in the aggregate, 25.

C. Common Snipe:

1836 Treaty Area Season Dates: Begin September 15 and end December 31, 2012.

1837 and 1842 Treaty Area Season Dates: Begin September 4 and end December 31, 2012.

Daily Bag Limit: 16 common snipe.

D. Woodcock:

1836 Treaty Area Season Dates: Begin September 15 and end December 31, 2012.

1837 and 1842 Treaty Area Season Dates: Begin September 4 and end December 31, 2012.

Daily Bag Limit: 10 woodcock.

E. Mourning Dove: 1837 and 1842 Ceded Territories only.

Season Dates: Begin September 1 and end November 9, 2012.

Daily Bag Limit: 15 mourning doves.

F. Sandhill Cranes: 1837 and 1842 Ceded Territories only.

Season Dates: Begin September 4 and end December 31, 2012.

Daily Bag Limit: 1 crane.

General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. There is no possession limit. For purposes of enforcing bag limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective section 10.05(2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for nontribal members as published at 64 FR 29799, June 3, 1999.

5. The shell limit restrictions included in the respective section 10.05(2)(b) of the model ceded territory conservation codes will be removed.

6. Hunting hours shall be from a half hour before sunrise to 30 minutes after sunset.

We propose to approve the above GLIFWC regulations for the 2012–13 hunting season.

(f) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The Tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

The Tribe proposed a 2012–13 waterfowl and Canada goose season beginning October 13, 2012, and a closing date of November 30, 2012. Daily bag and possession limits for waterfowl would be the same as Pacific Flyway States. The Tribe proposes a daily bag limit for Canada geese of two. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2012–13 season, estimated duck harvest was 436, which is within the historical harvest range. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised less than one percent of the total harvest in 2011. The estimated harvest of geese was 23 birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2012–13 waterfowl harvest would be around 500 ducks and 15–25 geese.

We propose to approve the Tribe's requested 2012–13 hunting seasons.

(g) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The Tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The Tribe enjoys excellent wildlife management relations with the State. The Tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife.

The nontribal member seasons described below pertain to a 176-acre waterfowl management unit and 800 acres of reservation land with a guide for waterfowl hunting. The Tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 2012–13 migratory bird hunting seasons, the Kalispel Tribe proposed tribal and nontribal member waterfowl seasons. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks.

For nontribal hunters on reservation, the Tribe requests the seasons open at the earliest possible date and remain open, for the maximum amount of open days. Specifically, the Tribe requests that the season for ducks begin September 22, 2012, and end January 31, 2013. In that period, nontribal hunters would be allowed to hunt approximately 101 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe.

The Tribe also requests the season for geese run from September 1 to September 13, 2012, and from October 1, 2012, to January 31, 2013. Total number of days should not exceed 107. Nontribal hunters should obtain further information on specific hunt days from the Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The Tribe reports past nontribal harvest of 1.5 ducks per day. Under the proposal, the Tribe expects harvest to be similar to last year and less than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of nontoxic shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel Tribe proposes season dates consistent with Federal flyway frameworks. Specifically, the Tribe requests outside frameworks for ducks of October 1, 2012, through January 31, 2013, and for geese of September 1, 2012, through January 31, 2013. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks. During that period, the Tribe proposes that the season run continuously. Daily bag and possession limits would be concurrent with the Federal rule.

The Tribe reports that there was no tribal harvest. Under the proposal, the Tribe expects harvest to be less than 200 birds for the season with less than 100 geese. Tribal members would be

required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe, provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway.

(h) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamath Tribe. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal regulatory enforcement officers monitor tribal harvest by frequent bag checks and hunter interviews.

For the 2012–13 season, the Tribe requests proposed season dates of October 1, 2012, through January 31, 2013. Daily bag limits would be 9 for ducks, 9 for geese, and 9 for coot, with possession limits twice the daily bag limit. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, this year's harvest would be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath Basin.

We propose to approve the Klamath Tribe's requested 2012–13 special migratory bird hunting regulations.

(i) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized Tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2012–13 season, the Tribe requests a duck season starting on September 15 and ending December 31, 2012, and a goose season to run from September 1 through December 31, 2012. Daily bag limits for ducks would be 10, including no more than 5 pintail, 5 canvasback, and 5 black ducks. Daily bag limits for geese would be 10. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by tribal members on the Leech Lake Reservation is estimated at 500–1,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's special migratory bird hunting season.

(j) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

The Little River Band of Ottawa Indians is a self-governing, federally recognized Tribe located in Manistee, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties. The Band normally proposes regulations to govern the hunting of migratory birds by Tribal members within the 1836 Ceded Territory as well as on the Band's Reservation.

For the 2012–13 season, we assume the Little River Band of Ottawa Indians would propose a duck and merganser season from September 15, 2012, through January 20, 2013. A daily bag limit of 12 ducks would include no more than 2 pintail, 2 canvasback, 3 black ducks, 3 wood ducks, 3 redheads, 6 mallards (only 2 of which may be a hen), and 1 hooded merganser. Possession limits would be twice the daily bag limit.

For white-fronted geese, snow geese, and brant, the Tribe usually proposes a September 20 through November 30 season. Daily bag limits would be five geese.

For Canada geese only, the Tribe will likely propose a September 1, 2012, through February 8, 2013, season with a daily bag limit of five. The possession limit would be twice the daily bag limit.

For snipe, woodcock, rails, and mourning doves, we expect the Tribe will propose a September 1 to November 14, 2012, season. The daily bag limit would be 10 common snipe, 5 woodcock, 10 rails, and 10 mourning doves. Possession limits for all species would be twice the daily bag limit.

The Tribe monitors harvest through mail surveys. General conditions are as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2012–13 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We plan to approve Little River Band of Ottawa Indians' special migratory bird hunting seasons upon receipt of their proposal based on the provisions described above.

(k) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

The Little Traverse Bay Bands of Odawa Indians (LTBB) is a self-governing, federally recognized Tribe located in Petoskey, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2012–13 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to those of other Tribes in the 1836 treaty area. LTBB proposes the regulations to govern the hunting of migratory birds by tribal members on the LTBB reservation and within the 1836 Treaty Ceded Territory. The tribal member duck and merganser season would run from September 15, 2012, through January 31, 2013. A daily bag limit of 20 ducks and 10 mergansers would include no more than 5 hen mallards, 5 pintail, 5 canvasback, 5 scaup, 5 hooded merganser, 5 black ducks, 5 wood ducks, and 5 redheads.

For Canada geese, the Tribe proposes a September 1, 2012, through February 8, 2013, season. The daily bag limit for Canada geese would be 20 birds. We further note that, based on available data (of major goose migration routes), it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe. Possession limits are twice the daily bag limit.

For woodcock, the Tribe proposes a September 1, 2012, to December 1, 2012, season. The daily bag limit will not exceed 10 birds. For snipe, the Tribe proposes a September 1 to December 31, 2012, season. The daily bag limit will not exceed 16 birds. For mourning doves, the Tribe proposes a September 1 to November 14, 2012, season. The daily bag limit will not exceed 15 birds. For Virginia and sora rails, the Tribe proposes a September 1 to December 31, 2012, season. The daily bag limit will not exceed 20 birds per species. For coots and gallinules, the Tribe proposes a September 15 to December 31, 2012, season. The daily bag limit will not exceed 20 birds per species. The possession limit will not exceed 2 days' bag limit for all birds.

All other Federal regulations contained in 50 CFR part 20 would apply.

The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. In particular, the Tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians' requested 2012–13 special migratory bird hunting regulations.

(l) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via an MOA with the State of South Dakota. The MOA provided the Tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers-taken lands. For the 2012–13 season, the two parties have come to an agreement that provides the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and nontribal hunters.

For the 2012–13 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a nontribal member duck, merganser, and coot season length of 97 days, or the maximum number of days allowed by Federal frameworks in the High Plains Management Unit for this season. The Tribe proposes a duck season from September 29, 2012, through January 3, 2013. The daily bag limit would be six birds, including no more than two hen mallard and five mallards total, one pintail, two redheads, one canvasback, two wood ducks, two scaup, and one mottled duck. The daily bag limit for mergansers would be five, only two of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits.

The Tribe's proposed nontribal-member Canada goose season would run from October 27, 2012, through February 10, 2013 (107-day season length), with a daily bag limit of three Canada geese. The Tribe's proposed nontribal member white-fronted goose season would run from October 27, 2012, through January 4, 2013, and January 26 through February 10, 2013, with a daily bag limit of one white-fronted goose. The Tribe's proposed nontribal-member light goose season would run from October 27, 2012, through January 6, 2013, and February 2 through March 10, 2013. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

For tribal members, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season from September 22, 2012, through March 10, 2013. The daily bag limit would be six ducks, including no more than two hen mallard and five mallards total, one pintail, two redheads, one canvasback, two wood ducks, two scaup, and one mottled duck. The daily bag limit for mergansers would be five, only two of which could be hooded mergansers. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits.

The Tribe's proposed Canada goose season for tribal members would run from September 22, 2012, through March 10, 2013, with a daily bag limit of three Canada geese. The Tribe's proposed white-fronted goose tribal season would run from September 22, 2012, through March 10, 2013, with a daily bag limit of two white-fronted geese. The Tribe's proposed light goose tribal season would run from September 22, 2012, through March 10, 2013. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 2011–12 season, hunters harvested 551 geese and 695 ducks. In the 2011–12 season, duck harvest species composition was primarily mallard (74 percent), gadwall, and green-winged teal (8 percent).

Goose harvest species composition in 2011–12 at Mni Sho Sho was insignificant due to the few hunting days offered compared to previous years.

The Tribe anticipates a duck harvest similar to those of the previous 3 years and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of nontoxic shot, Migratory Waterfowl Hunting and Conservation Stamps, etc., would be observed by the Tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We plan to approve the Tribe's requested regulations for the Lower Brule Reservation given that the seasons' dates fall within final Federal flyway frameworks (applies to nontribal hunters only).

(m) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes are now acting independently and the Lower Elwha Klallam Tribe would like to establish migratory bird hunting regulations for tribal members for the 2012–13 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

For the 2012–13 season, the Lower Elwha Klallam Tribe requests a duck and coot season from September 15, 2012, to January 6, 2013. The daily bag limit will be seven ducks including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck will be one per season. The coot daily bag limit will be 25. The possession limit will be twice the daily bag limit, except as noted above.

For geese, the Tribe requests a season from September 15, 2012, to January 6, 2013. The daily bag limit will be four, including no more than three light geese. The season on Aleutian Canada geese will be closed.

For brant, the Tribe proposes to close the season.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a season from September 15, 2012, to January 6, 2013, with a daily bag limit of 10, 2, and 8, respectively. The

possession limit will be twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe typically anticipates harvest to be fewer than 10 birds. Tribal reservation police and Tribal fisheries enforcement officers have the authority to enforce these migratory bird hunting regulations.

The Service proposes to approve the request for special migratory bird hunting regulations for the Lower Elwha Klallam Tribe.

(n) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the State of Washington Game Management Units 601–603.

The Makah Indian Tribe proposes a duck and coot hunting season from September 22, 2012, to January 26, 2013. The daily bag limit is seven ducks, including no more than five mallards (only two hen mallard), one canvasback, one pintail, three scaup, and one redhead. The daily bag limit for coots is 25. The Tribe has a year-round closure on wood ducks and harlequin ducks. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

For geese, the Tribe proposes that the season open on September 22, 2012, and close January 26, 2013. The daily bag limit for geese is four and one brant. The Tribe notes that there is a year-round closure on Aleutian and dusky Canada geese.

For band-tailed pigeons, the Tribe proposes that the season open September 15, 2012, and close October 28, 2012. The daily bag limit for band-tailed pigeons is two.

The Tribe anticipates that harvest under this regulation will be relatively low since there are no known dedicated waterfowl hunters and any harvest of waterfowl or band-tailed pigeons is usually incidental to hunting for other species, such as deer, elk, and bear. The Tribe expects fewer than 50 ducks and 10 geese to be harvested during the 2012–13 migratory bird hunting season.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also usually proposed by the Tribe:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area.

(2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl.

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation.

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited.

(6) The use of dogs is permitted to hunt waterfowl.

The Service proposes to approve the Makah Indian Tribe's requested 2012–13 special migratory bird hunting regulations.

(o) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The Navajo Nation owns almost all lands on the reservation and has full wildlife management authority.

For the 2012–13 season, the Navajo Nation requests special migratory bird hunting regulations on the reservation for both tribal and nontribal hunters for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For ducks, mergansers, Canada geese, and coots, the Tribe requests the earliest opening dates and longest seasons, and the same daily bag and possession limits allowed to Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through September 30, 2012, with daily bag limits of 10 and 5, respectively. Possession limits would be twice the daily bag limits.

The Nation requires tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp), which must be signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

The Tribe anticipates a total harvest of fewer than 500 mourning doves; fewer than 10 band-tailed pigeons; fewer than 1,000 ducks, coots, and mergansers; and fewer than 1,000 Canada geese for the 2012–13 season. The Tribe will measure harvest by mail survey forms. Through the established Navajo Nation Code, titles 17 and 18, and 23 U.S.C. 1165, the Tribe will take action to close the season, reduce bag limits, or take other appropriate actions if the harvest is detrimental to the migratory bird resource.

We propose to approve the Navajo Nation's special migratory bird season.

(p) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and nontribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced the Tribe's hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the Tribe and Wisconsin.

In a June 18, 2012, letter, the Tribe proposed special migratory bird hunting regulations. For ducks, the Tribe described the general outside dates as being September 15 through December 2, 2012, with a closed segment of November 17 to 25, 2012. The Tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), six wood duck, one redhead, two pintail, and one hooded merganser.

For geese, the Tribe requests a season between September 1 and December 30, 2012, with a daily bag limit of five Canada geese from September 1 through 14, 2012, and three from September 15, 2012, through December 30, 2012. The Tribe will close the season November 17 to 25, 2012. If a quota of 300 geese is attained before the season concludes,

the Tribe will recommend closing the season early.

For woodcock, the Tribe proposes a season between September 1 and November 4, 2012, with a daily bag and possession limit of 5 and 10, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 4, 2012, with a daily bag and possession limit of 10 and 20, respectively.

The Tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including shooting hours of one-half hour before sunrise to sunset, season dates, and daily bag limits. Tribal members and nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Oneida members would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

(q) Point No Point Treaty Council Tribes, Kingston, Washington (Tribal Members Only)

We are establishing uniform migratory bird hunting regulations for tribal members on behalf of the Point No Point Treaty Council Tribes, consisting of the Port Gamble S'Klallam and Jamestown S'Klallam Tribes. The two tribes have reservations and ceded areas in northwestern Washington State and are the successors to the signatories of the Treaty of Point No Point of 1855. These proposed regulations will apply to tribal members both on and off reservations within the Point No Point Treaty Areas; however, the Port Gamble S'Klallam and Jamestown S'Klallam Tribal season dates differ only where indicated below.

For the 2012–13 season, we expect the Point No Point Treaty Council to request special migratory bird hunting regulations for the 2012–13 hunting season for both the Jamestown S'Klallam and Port Gamble S'Klallam Tribes. For ducks and coots hunting season, based on past experience, the Jamestown S'Klallam Tribe will likely propose the season open September 15, 2012, and close February 1, 2013. The Port Gamble S'Klallam Tribes usually proposes the season open from September 1, 2012, to February 1, 2013. The daily bag limit would be seven ducks, including no more than two hen mallards, one canvasback, one pintail, two redhead, and four scoters. The daily bag limit for coots would be 25. The daily bag limit and possession limit on harlequin ducks would be one per season. The daily possession limits are double the daily bag limits except where noted.

For geese, the Point No Point Treaty Council will likely propose the season open on September 15, 2012, and close March 10, 2013. The daily bag limit for geese would be four, not to include more than three light geese. The Council notes that there is a year-round closure on Aleutian and cackling Canada geese. For brant, we expect the Council to propose the season open on November 13, 2012, and close January 31, 2013. The daily bag limit for brant would be two.

For band-tailed pigeons and snipe, we expect the Port Gamble S'Klallam Tribe to propose the season open September 1, 2012, and close March 10, 2013. The Jamestown S'Klallam Tribe will likely propose the season open September 15, 2012, and close March 10, 2013. The daily bag limit for band-tailed pigeons will probably be two and eight for snipe. For mourning dove, we expect the Port Gamble S'Klallam Tribe to propose the season open September 1, 2012, and close January 31, 2013. The Jamestown S'Klallam Tribe will likely propose the season open September 15, 2012, and close January 14, 2013. The daily bag limit for mourning dove would be 10.

The Tribe usually anticipates a total harvest of fewer than 200 birds for the 2012–13 season. The tribal fish and wildlife enforcement officers have the authority to enforce these tribal regulations.

We propose to approve the Point No Point Treaty Council Tribe's special migratory bird seasons upon receipt of the Tribe's proposal.

(r) Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only)

The Sault Ste. Marie Tribe of Chippewa Indians is a federally recognized self-governing Indian Tribe, distributed throughout the eastern Upper Peninsula and northern Lower Peninsula of Michigan. The Tribe has retained the right to hunt, fish, trap, and gather on the lands ceded in the Treaty of Washington (1836).

In a May 31, 2012, letter, the Tribe proposed special migratory bird hunting regulations. For ducks, mergansers, and common snipe, the Tribe proposes outside dates as September 15 through December 31, 2012. The Tribe proposes a daily bag limit of 20 ducks, which could include no more than 10 mallards (5 hen mallards), 5 wood duck, 5 black duck, and 5 canvasback. The merganser daily bag limit is 10 in the aggregate and 16 for common snipe.

For geese, coot, gallinule, sora, and Virginia rail, the Tribe requests a season from September 1 to December 31, 2012. The daily bag limit for geese is 20, in the aggregate. The daily bag limit for coot, gallinule, sora, and Virginia rail is 20 in the aggregate.

For woodcock, the Tribe proposes a season between September 2 and December 1, 2012, with a daily bag and possession limit of 10 and 20, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 14, 2012, with a daily bag and possession limit of 10 and 20, respectively.

All Sault Ste. Marie Tribe members exercising hunting treaty rights within the 1836 Ceded Territory are required to submit annual harvest reports including date of harvest, number and species harvested, and location of harvest. Hunting hours would be from one-half hour before sunrise to one-half hour after sunset. All other regulations in 50 CFR part 20 apply including the use of only nontoxic shot for hunting waterfowl.

The Service proposes to approve the request for special migratory bird hunting regulations for the Sault Ste. Marie Tribe of Chippewa Indians.

(s) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally owned. The Tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the Tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they would provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2012–13 hunting season, provided the duck and goose hunting

season dates are the same as on the reservation.

In a proposal for the 2012–13 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season, with the maximum number of days and the same daily bag and possession limits permitted for Pacific Flyway States under the final Federal frameworks. The Tribes propose a duck and coot season with, if the same number of hunting days is permitted as last year, an opening date of October 6, 2012, and a closing date of January 19, 2013. The Tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The Tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 6, 2012, and a closing date of January 19, 2013. The Tribes anticipate harvest will be between 4,000 and 6,000 geese.

The Tribe requests a common snipe season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 6, 2012, and a closing date of January 19, 2013.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year, and we propose to approve them for the 2012–13 hunting season given that the seasons' dates fall within the final Federal flyway frameworks (applies to nontribal hunters only).

(t) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which the Skokomish Tribe was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes have been acting independently since 2005, and the Skokomish Tribe would like to establish migratory bird hunting regulations for tribal members for the 2012–13 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

The Skokomish Tribe requests a duck and coot season from September 16, 2012, to February 28, 2013. The daily bag limit is seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck is one per season. The coot daily bag limit is 25. The possession limit is twice the daily bag limit except as noted above.

For geese, the Tribe requests a season from September 16, 2012, to February 28, 2013. The daily bag limit is four, including no more than three light geese. The season on Aleutian Canada geese is closed. For brant, the Tribe proposes a season from November 1, 2012, to February 15, 2013, with a daily bag limit of two. The possession limit is twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a season from September 16, 2012, to February 28, 2013, with a daily bag limit of 10, 2, and 8, respectively. The possession limit is twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Skokomish Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe anticipates harvest to be fewer than 150 birds. The Skokomish Public Safety Office enforcement officers have the authority to enforce these migratory bird hunting regulations.

We propose to approve the Skokomish Tribe's requested migratory bird hunting season.

(u) Spokane Tribe of Indians, Spokane Indian Reservation, Wellpinit, Washington (Tribal Members Only)

The Spokane Tribe of Indians wishes to establish waterfowl seasons on their reservation for its membership to access as an additional resource. An established waterfowl season on the reservation will allow access to a resource for members to continue practicing a subsistence lifestyle.

The Spokane Indian Reservation is located in northeastern Washington State. The reservation comprises approximately 157,000 acres. The boundaries of the Reservation are the Columbia River to the west, the Spokane River to the south (now Lake Roosevelt), Tshimikn Creek to the east, and the 48th Parallel as the north boundary. Tribal membership comprises approximately 2,300 enrolled Spokane Tribal Members.

These proposed regulations would allow Tribal Members, spouses of Spokane Tribal Members, and first-generation descendants of a Spokane Tribal Member with a tribal permit and Federal Waterfowl stamp an opportunity to utilize the reservation and ceded lands for waterfowl hunting. It will also benefit tribal membership through access to this resource throughout Spokane Tribal ceded lands in eastern Washington. By Spokane Tribal Referendum, spouses of Spokane Tribal Members and children of Spokane Tribal Members not enrolled are allowed to harvest game animals within the Spokane Indian Reservation with the issuance of hunting permits.

For the 2012–13 season, the Tribe requests to establish duck seasons that would run from September 2, 2012, through January 31, 2013. The tribe is requesting the daily bag limit for ducks to be consistent with final Federal frameworks. The possession limit is twice the daily bag limit.

The Tribe proposes a season on geese starting September 2, 2012, and ending on January 31, 2013. The tribe is requesting the daily bag limit for geese to be consistent with final Federal frameworks. The possession limit is twice the daily bag limit.

Based on the quantity of requests the Spokane Tribe of Indians has received, the tribe anticipates harvest levels for the 2012–13 season for both ducks and geese to be below 100 total birds with goose harvest at fewer than 50. Hunter success will be monitored through mandatory harvest reports returned within 30 days of the season closure.

We propose to approve the Spokane Tribe's requested 2012–13 special migratory bird hunting regulations.

(v) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

Based on past experience, for the 2012–13 season, we expect the Tribe will request to establish duck and coot seasons that would run from September 1, 2012, through January 15, 2013. The daily bag limit for ducks would be five

per day and could include only one canvasback. The season on harlequin ducks is closed. For coots, the daily bag limit is 25. For snipe, the Tribe will likely propose that the season start on September 15, 2012, and end on January 15, 2013. The daily bag limit for snipe would be eight. For band-tailed pigeon, we expect the Tribe to propose that the season start on September 1, 2012, and end on December 31, 2012. The daily bag limit would be five. The possession limit would be twice the daily bag limit.

We expect the Tribe to propose a season on geese starting September 15, 2012, and ending on January 15, 2013. The daily bag limit for geese would be four, including no more than two snow geese. The season on Aleutian and cackling Canada geese would be closed. For brant, the Tribe will likely propose that the season start on September 1, 2012, and end on December 31, 2012. The daily bag limit for brant would be two. The possession limit would be twice the daily bag limit.

We propose to approve the Tribe's requested 2012–13 special migratory bird hunting regulations upon receipt of the Tribe's proposal.

(w) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. For the 2012–13 season, the Tribe requests regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, and Port Susan to the border of the Tulalip Tribes Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a federally recognized Tribe and reserves the Treaty Right to hunt (*U.S.* v. *Washington*).

The Tribe proposes that duck (including mergansers) and goose seasons run from October 1, 2012, to February 15, 2013. The daily bag limit on ducks (including sea ducks and mergansers) is 10 and must include no more than 7 mallards (only 3 of which can be hens), 3 pintails, 3 redheads, 3 scaup, and 3 canvasbacks. For geese, the daily bag limit is six. Possession limits are totals of these two daily bag limits.

The Tribe proposes that coot, brant, and snipe seasons run from October 1, 2012, to January 31, 2013. The daily bag limit for coot is 25. The daily bag limit on brant is three. The daily bag limit for snipe is 10. Possession limits are twice the daily bag limit.

The Tribe proposes that band-tailed pigeon and dove seasons run from September 1, 2012, to October 31, 2012. The daily bag limit for band-tailed pigeon is four. The daily bag limit on dove is 10. Possession limits are twice the daily bag limit.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal law enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

The Tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the 2012–13 Stillaguamish Tribe's request for special migratory bird hunting regulations for the Stillaguamish Tribe of Indians.

(x) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a federally recognized Indian Tribe consisting of the Swinomish, Lower Skagit, Samish, and Kikialous. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in the Puget Sound area north of Seattle, Washington.

For the 2012–13 season, we anticipate that the Tribal Community will request to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. The Tribal Community usually requests to establish duck, merganser, Canada goose, brant, and coot seasons opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes its season. The Swinomish Indian Tribal Community requests an additional three birds of each species over the numbers allowed by the State for daily bag and possession limits.

The Community normally anticipates that the regulations will result in the harvest of approximately 300 ducks, 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish utilize a report card and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community will likely propose a hunting season for the above-mentioned species beginning on the earliest possible opening date and closing March 9, 2013. The Swinomish manage harvest by a report card and permit system, and we anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely affect migratory bird populations. Upon receipt of the 2012–13 Swinomish hunting proposal, we propose to approve the Tribe's requested 2012–13 special migratory bird hunting regulations.

(y) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

The Tulalip Tribes are the successors in interest to the Tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation just north of the City of Everett in Snohomish County, Washington. The Tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

The Tribe proposes tribal and nontribal hunting regulations for the 2012–13 season. Migratory waterfowl hunting by Tulalip Tribal members is authorized by Tulalip Tribal Ordinance No. 67. For ducks, mergansers, coot, and snipe, the proposed season for tribal members is from September 7, 2012, through February 28, 2013. In the case of nontribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed under the final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 7 and 14 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established in accordance

with final Federal frameworks. For nontribal hunters, bag and possession limits would be the same as those permitted under final Federal frameworks. For coot, daily bag and possession limits are 25 and 50, respectively, and for snipe 8 and 16, respectively. Nontribal hunters should check with the Tulalip tribal authorities regarding additional conservation measures that may apply to specific species managed within the region. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified tribal member. Such a hunt must have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

For geese, tribal members propose a season from September 7, 2012, through February 28, 2013. Nontribal hunters would be allowed the longest season and the latest closing date permitted by the Pacific Flyway Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 7 and 14, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks. For nontribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the Pacific Flyway. The Tulalip Tribes also set a maximum annual bag limit for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Each nontribal hunter 16 years of age and older hunting pursuant to Tulalip Tribes' Ordinance No. 67 must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Each hunter must validate stamps by signing across the face.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and nontribal hunters of fewer than 1,000 ducks and 500 geese annually.

We propose to approve the Tulalip Tribe's request to have a special season.

(z) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal members only)

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe has jurisdiction over lands within Skagit, Island, and Whatcom Counties, Washington. The Tribe issues tribal hunters a harvest report card that will be shared with the State of Washington.

For the 2012–13 season, the Tribe requests a duck season starting October 1, 2012, and ending February 28, 2013. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The Tribe requests a coot season starting October 1, 2012, and ending February 15, 2013. The coot daily bag limit is 20 with a possession limit of 30.

The Tribe proposes a goose season from October 1, 2012, to February 28, 2013, with a daily bag limit of 7 geese and a possession limit of 10. For brant, the Tribe proposes a season from November 1 to November 10, 2012, with a daily bag and possession limit of 2.

The Tribe proposes a mourning dove season between September 1 and December 31, 2012, with a daily bag limit of 12 and possession limit of 15.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. Tribal members must have the tribal identification and tribal harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be 15 minutes before official sunrise to 15 minutes after official sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Upper Skagit Indian Tribe.

(aa) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

The Wampanoag Tribe of Gay Head is a federally recognized Tribe located on the island of Martha's Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

For the 2012–13 season, the Tribe proposes a duck season of October 13, 2012, through October 21, 2012, and October 29, 2012, through February 23, 2013. The Tribe proposes a daily bag limit of six birds, which could include no more than four hen mallards, four mottled ducks, one fulvous whistling duck, four mergansers, three scaup, two hooded mergansers, three wood ducks, one canvasback, two redheads, two pintail, and four of all other species not listed. The season for harlequin ducks is closed. The Tribe proposes a teal (green-winged and blue) season of October 11, 2012, through February 23, 2013. A daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, the Tribe proposes a season between October 6, 2012, and February 23, 2013, with a daily bag limit of seven, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For Canada geese, the Tribe requests a season between September 5 and September 22, 2012, and October 29, 2012, and February 23, 2013, with a daily bag limit of 8 Canada geese. For snow geese, the tribe requests a season between September 5 to September 22, 2012, and November 26, 2012, to February 23, 2013, with a daily bag limit of 15 snow geese.

For woodcock, the Tribe proposes a season between October 11 and November 24, 2012, with a daily bag limit of three. For sora and Virginia rails, the Tribe requests a season of September 1, 2012, through November 10, 2012, with a daily bag limit of 5 sora and 10 Virginia rails. For snipe, the Tribe requests a season of September 1, 2012, through December 16, 2012, with a daily bag limit of 8.

Prior to 2012, the Tribe had 22 registered tribal hunters and estimates harvest to be no more than 15 geese, 25 mallards, 25 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. The Tribe requires hunters to register with the Harvest Information Program.

We propose to approve the Wampanoag Tribe of Gay Head's requested 2012–13 special migratory bird hunting regulations.

(bb) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Ojibwe is a federally recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The Tribe and the Service first cooperated to establish special tribal regulations in 1999.

For the 2012–13 migratory bird hunting season, the White Earth Band of Ojibwe requests a duck season to start September 17 and end December 11, 2012. For ducks, they request a daily bag limit of 10, including no more than 2 mallards, 1 pintail, and 1 canvasback. For mergansers, the Tribe proposes the season to start September 17 and end December 18, 2012. The merganser daily bag limit would be five with no more than two hooded mergansers. For geese, the Tribe proposes an early season from September 1 through September 25, 2012, and a late season from September 26, 2012, through December 19, 2012. The early season daily bag limit is eight geese, and the late season daily bag limit is five geese.

For coots, dove, rail, woodcock, and snipe, the Tribe proposes a September 1 through November 30, 2012, season with daily bag limits of 20 coots, 25 doves, 25 rails, 10 woodcock, and 10 snipe. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the Tribe anticipates harvest of 1,000 to 2,000 Canada geese and 1,000 to 1,500 ducks. The White Earth Reservation Tribal Council employs four full-time conservation officers to enforce migratory bird regulations.

We propose to approve the White Earth Band of Ojibwe's request to have a special season.

(cc) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the Tribe has recognized full wildlife management authority. As in past years, the White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: the length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2012–12 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2012–13 season.

For nontribal and tribal hunters, the Tribe proposes a continuous duck, coot, merganser, gallinule, and moorhen hunting season, with an opening date of October 12, 2012, and a closing date of January 28, 2013. The Tribe proposes a separate scaup season, with an opening date of October 20, 2012, and a closing date of December 2, 2012. The Tribe proposes a daily duck (including mergansers) bag limit of seven, which may include no more than two redheads, two pintail, seven mallards (including no more than two hen mallards), one canvasback, and three scaup. The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate.

For geese, the Tribe proposes a season from October 20, 2012, through January 28, 2013. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would run for the maximum season lengths in the Pacific Flyway, in Wildlife Management Unit 10 and all areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal.

A number of special regulations apply to tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We plan to approve the White Mountain Apache Tribe's 2012–13 hunting seasons.

(dd) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

The Yankton Sioux Tribe has yet to submit a waterfowl hunting proposal for the 2012–13 season. The Yankton Sioux tribal waterfowl hunting season usually would be open to both tribal members and nontribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For ducks (including mergansers) and coots, we expect the Yankton Sioux Tribe to propose a season starting October 9, 2012, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be six ducks, which may include no more than five mallards (no more than two hens), one canvasback (when the season is open), two redheads, three scaup, one pintail, or two wood ducks. The bag limit for mergansers would be five, which would include no more than one hooded merganser. The coot daily bag limit would be 15.

For geese, the Tribe will likely request a dark goose (Canada geese, brant, white-fronted geese) season starting October 29, 2012, and closing January 31, 2013. The daily bag limit would be three geese (including no more than one white-fronted goose or brant). Possession limits would be twice the daily bag limit.

For white geese, the proposed hunting season would start October 29, 2012, and run for the maximum amount of days allowed under the final Federal frameworks for the State of South Dakota. Daily bag and possession limits would equal the maximum allowed under Federal frameworks.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 2005–06 hunting season, the Tribe reported that 90 nontribal hunters took 400 Canada geese, 75 light geese, and 90 ducks. Forty-five tribal members harvested fewer than 50 geese and 50 ducks.

We plan to approve the Yankton Sioux 2012–13 hunting seasons upon receipt of their proposal based on the provisions described above.

Public Comments

The Department of the Interior's policy is, whenever possible, 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 promulgating final migratory game bird hunting regulations, we will consider all comments we receive. These 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. 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 the preambles of any final rules.

Required Determinations

Based on our most current data, we are affirming our required determinations made in the proposed rule; for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see our April 17, and May 17, 2012, proposed rules (77 FR 23094 and 77 FR 29516):

- National Environmental Policy Act;
- Endangered Species Act;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12866, 13563, 12988, 13175, 13132, and 13211.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Based on the results of migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 2012, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and nontribal hunters may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules, woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks, mergansers, and geese.

The rules that eventually will be promulgated for the 2012–13 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

Dated: August 9, 2012.

Michael J. Bean,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–20072 Filed 8–15–12; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 159 August 16, 2012

Part VI

The President

Notice of August 15, 2012—Continuation of the National Emergency With Respect to Export Control Regulations

Federal Register
Vol. 77, No. 159
Thursday, August 16, 2012

Presidential Documents

Title 3—

The President

Notice of August 15, 2012

Continuation of the National Emergency With Respect to Export Control Regulations

On August 17, 2001, consistent with the authority provided to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the President issued Executive Order 13222. In that order, he declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2012. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
August 15, 2012.

[FR Doc. 2012–20378
Filed 8–15–12; 2:15 pm]
Billing code 3295–F2–P

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 1369/P.L. 112–156

To designate the facility of the United States Postal Service located as 1021 Pennsylvania Avenue in Hartshorne, Oklahoma, as the ''Warren Lindley Post Office''. (Aug. 10, 2012; 126 Stat. 1212)

H.R. 1560/P.L. 112–157

To amend the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act to allow the Ysleta del Sur Pueblo Tribe to determine blood quantum requirement for membership in that tribe. (Aug. 10, 2012; 126 Stat. 1213)

H.R. 1905/P.L. 112–158

Iran Threat Reduction and Syria Human Rights Act of 2012 (Aug. 10, 2012; 126 Stat. 1214)

H.R. 3276/P.L. 112–159

To designate the facility of the United States Postal Service located at 2810 East Hillsborough Avenue in Tampa, Florida, as the ''Reverend Abe Brown Post Office Building''. (Aug. 10, 2012; 126 Stat. 1270)

H.R. 3412/P.L. 112–160

To designate the facility of the United States Postal Service located at 1421 Veterans Memorial Drive in Abbeville, Louisiana, as the ''Sergeant Richard Franklin Abshire Post Office Building''. (Aug. 10, 2012; 126 Stat. 1271)

H.R. 3501/P.L. 112–161

To designate the facility of the United States Postal Service located at 125 Kerr Avenue in Rome City, Indiana, as the ''SPC Nicholas Scott Hartge Post Office''. (Aug. 10, 2012; 126 Stat. 1272)

H.R. 3772/P.L. 112–162

To designate the facility of the United States Postal Service located at 150 South Union Street in Canton, Mississippi, as the ''First Sergeant Landres Cheeks Post Office Building''. (Aug. 10, 2012; 126 Stat. 1273)

H.R. 5986/P.L. 112–163

To amend the African Growth and Opportunity Act to extend the third-country fabric program and to add South Sudan to the list of countries eligible for designation under that Act, to make technical corrections to the Harmonized Tariff Schedule of the United States relating to the textile and apparel rules of origin for the Dominican Republic-Central America-United States Free Trade Agreement, to approve the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for others purposes. (Aug. 10, 2012; 126 Stat. 1274)

S. 270/P.L. 112–164

La Pine Land Conveyance Act (Aug. 10, 2012; 126 Stat. 1279)

S. 271/P.L. 112–165

Wallowa Forest Service Compound Conveyance Act (Aug. 10, 2012; 126 Stat. 1281)

S. 679/P.L. 112–166

Presidential Appointment Efficiency and Streamlining Act of 2011 (Aug. 10, 2012; 126 Stat. 1283)

S. 739/P.L. 112–167

To authorize the Architect of the Capitol to establish battery recharging stations for privately owned vehicles in parking areas under the jurisdiction of the Senate at no net cost to the Federal Government. (Aug. 10, 2012; 126 Stat. 1296)

S. 1959/P.L. 112–168

Haqqani Network Terrorist Designation Act of 2012 (Aug. 10, 2012; 126 Stat. 1299)

S. 3363/P.L. 112–169

To provide for the use of National Infantry Museum and Soldier Center Commemorative Coin surcharges, and for other purposes. (Aug. 10, 2012; 126 Stat. 1302)

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